

**BEFORE THE FEDERAL ELECTION COMMISSION**

Dr. Benjamin Carson,	)	MUR 6989
Carson America, Inc. and	)	Response to Complaint
Logan D. Delany, Jr., in his capacity as treasurer	)	

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In accordance with 52 U.S.C. § 30109(a) (1), this response (Response) is filed in the above referenced matter, on behalf of Dr. Benjamin Carson (Carson), Carson America, Inc. (CAI) and Logan D. Delany, Jr., in his capacity as treasurer of CAI (Respondents).

The complaint (Complaint), which was filed by Brad Woodhouse, in his capacity as an officer of American Democracy Legal Fund (Complainant) alleges that Penguin Random House, LLC, through its sub-division Sentinel, (Publisher) and Respondents violated provisions of the Federal Election Campaign Act of 1971, as amended (FECA or Act). It is alleged that the Publisher paid for expenses associated with a promotional tour for a book authored by Carson during which Carson allegedly also undertook activities that were for the purpose influencing his presidential campaign. For the reasons set forth herein, there is no factual or legal support for the allegations in the Complaint and Respondents request the Federal Election Commission (FEC or Commission) make a finding of no reason to believe and close the file on this matter.

**I. Factual Summary**

1. Since his retirement from Johns Hopkins University in June of 2013, Carson has earned income primarily through his authorship of books and paid inspirational speeches. Carson has published ten (10) books (See *Declaration of Audrey Jones* (A.J. Decl.) at Exhibit A ¶¶ 4 & 5). In addition, Carson has given two hundred and two (202) paid speeches since his retirement in 2013 through 2015<sup>1</sup> (A.J. Decl. ¶ 6).
2. The business activities of Carson are administered through American Business Collaborative, LLC, (ABC) for which Carson serves as the Managing Member. ABC serves as the entity through which Carson's current professional activities, including speeches, book publications and book promotions, are undertaken. Audrey Jones (Jones) currently, and at all times during the Book Tour, serves as the Executive Manager of ABC. She has held that position since July 15, 2013<sup>2</sup> (A.J. Decl. ¶ 2).

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<sup>1</sup> Carson gave an additional 139 paid speeches between the years of 2009 and 2012, while still employed at Johns Hopkins University (A.J. Decl. ¶ 6).

<sup>2</sup> From July 1996 until June 2013, Jones served as Administrative Assistant/Supervisor for Dr. Carson during his stay at Johns Hopkins University, Neurosurgical Department.

Jones' responsibilities at ABC include coordinating speaking engagements with a speaker's bureau on all contractual engagements and charitable appearances by Carson and all related travel and interview events (A.J. Decl. ¶ 3). From 2013 through 2015, Carson contracted to deliver a total of two hundred two (202) paid speeches, the logistical support for each of which was provided by Jones.<sup>3</sup>

3. Within the scope of her responsibilities associated with Carson's book publications, Jones provides logistical coordination with sponsors for all activities related to the unpaid speeches and appearances made by Carson, and logistical coordination, including travel, with Carson's speech management company for paid speeches and appearances (A.J. Decl. ¶ 3). Jones provides similar types of services related to Carson's publications. She acts as the coordinator between Carson and the publishers for various activities including travel, book tour activities, promotional book signings, media scheduling for interviews and appearances. She has provided these services for Carson's publications to include, *The Big Picture* (2000), *Take the Risk* (2006), *America the Beautiful* (2011), *One Nation* (2014) and *More Perfect Union* (2015) (A.J. Decl. ¶ 4).<sup>4</sup>
4. In March of 2015, Carson commenced testing the waters activities for a potential presidential candidacy and on May 15, 2015 he filed his FEC Form 2, Statement of Candidacy with the Commission, naming CAI as his principle campaign committee. He continued his campaign activities until March 4, 2016 at which time he announced he was suspending his presidential campaign.
5. In May 2015, Jones was also retained by CAI to serve as a consultant to coordinate activities between CAI scheduled events and ABC related events (A.J. Decl. ¶ 8). Jones also maintained her position as Executive Manager for ABC during this same period of time. In this manner, Jones served as the central clearing and coordination person for calendars and events of CAI and ABC related activities (A.J. Decl. ¶ 9). She was compensated on an allocated basis by both entities so as to avoid allegations of CAI receiving an excessive in-kind contribution from ABC for services Jones would provide related to CAI travel and correspondingly avoid allegations that CAI funds were used for the prohibited personal use of Carson by CAI providing services related to ABC speech and Book Tour activities by Jones (see 52 U.S.C. § 30114(b)).

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<sup>3</sup> Carson ceased booking paid speaking engagements in January 2015 since he was contemplating a potential campaign for the presidency. All paid speaking engagements in 2015 were fulfilling contractual commitments entered into prior to January of 2015 (A.J. Decl. ¶¶ 6 & 7).

<sup>4</sup> Additional publications authored by Carson include *Gifted Hands* (1990); *THINK BIG* (1992); *One Vote* (2014); *My Life* (2015) and *You Have a Brain* (2015) (A.J. Decl. ¶ 5).

6. Sealy M. Yates (Yates) is an attorney admitted to the practice of law in California and before United States federal courts. He has served as a literary agent for numerous clients since 1988. Since 1992, he has qualified as an expert witness in California Superior Courts regarding book publication issues (See *Declaration of Sealy M. Yates* (S.Y. Decl.) at Exhibit B, ¶¶ 2 & 3).
7. Yates is the senior partner in the law firm of Yates & Yates, LLC located in California. Since 1979, he has represented numerous clients, who have sold millions of books, in their contract negotiations with publishers (S.Y. Decl. ¶ 4). Commencing in 2010, Yates has personally represented Carson as his literary attorney in negotiations for six (6) publications which include, *America the Beautiful*, *One Nation*, *One Vote*, *You Have a Brain*, *My Life* and *A More Perfect Union*, the latter of which is the subject of this matter before the Commission (S.Y. Decl. ¶ 5).
8. In the spring of 2014, Carson had back-to-back books published that were extremely successful. *America the Beautiful* was published by Zondervan Corporation, a subsidiary of Harper Collins (S.Y. Decl. ¶ 7). *America the Beautiful*, the hardback version, was on the New York Times Bestsellers List for a total of ten (10) weeks (March 4, 2012 through April 21, 2013). The ebook version was on the New York Times Bestsellers List for twelve (12) weeks (March 3, 2013 through August 10, 2014). The paperback version of the book was on the New York Times Bestsellers List for a total of fifty-three (53) weeks (March 4, 2013 through June 22, 2014) (S.Y. Decl. ¶ 8).
9. The second publication was *One Nation*, published by Penguin Group (S.Y. Decl. ¶ 7). The hardback of *One Nation*, was on the New York Times Bestseller List for a total of twenty (20) weeks (June 8, 2014 through October 19, 2014) and for five (5) of those weeks it was the # 1 bestseller on the Times list. The ebook version of *Nation* was on the New York Times Bestsellers List for a total of seven (7) weeks (June 8, 2014 through September 14, 2014). The paper edition of *One Nation* was on the New York Times Bestsellers List for a total of ten (10) weeks (September 14, 2015 through November 22, 2015) (S.Y. Decl. ¶ 9).
10. In May of 2014, as a result of the numerous successful publications by Carson, Yates was approached by the Publisher's representative, Adrian Zackheim, with a request that Carson enter into a new publishing contract for publication of another book (S.Y. Decl. ¶ 10).
11. On July 15, 2014, ABC entered into a contract (Contract) with the Publisher to author a book entitled, *Its Our Constitution*, the title of which was subsequently changed to,

*A More Perfect Union: What We the People Can Do to Reclaim Our Constitutional Liberties* (Book). The Contract was negotiated by Yates, on an arms-length basis, the terms and conditions of which would have been similar from most any other publisher (S.Y. Decl. ¶¶ 11 and 13).

12. As part of Carson's contractual obligations, the Publisher required Carson to participate in a promotional book tour subsequent to the Book's scheduled 2015 publication. The Book tour commenced on October 4, 2015 and concluded November 6, 2015 (Book Tour) (A.J. Decl. ¶ 10). Specifically, with respect to the Book Tour, the contract stated:

"It is a material term of this Agreement that the Author will make himself available for *reasonable* publicity appearances on behalf of the Work at places and times requested by the Publisher in consultation with the Author for a period of three (3) weeks at the time of the Publisher's initial hardcover publication of the Work. The Publisher will provide the Author with reasonable notice prior to such event as to which three (3) weeks it desires the Author to make himself so available. The Proprietor represents and warrants that the Author has not nor will have, prior to the publication of the Work, any existing contractual commitments or obligations to seek third party approval that could prevent him from making such appearances." (original emphasis) (S.Y. Decl. ¶14).

13. This type of book tour commitment by the author is standard business practice in the publishing business. The author typically agrees to personally participate in activities to promote the sale of the book at the time of its initial publication. These book tours typically involve a multi-city book signing commitment often throughout numerous states. Standard commitments would include five (5) to seven (7) days for multi-state interviews and an additional ten (10) to fourteen (14) days for appearances for book signings. The number of days for the book tour can exceed the typical profile presented above based upon the level of advanced royalties paid to the author (S.Y. Decl. ¶ 12).

14. As part of the Book Tour, Carson was invited by the National Press Club in Washington D.C. (NPC) to appear on October 9, 2015 as a luncheon speaker to discuss the Book (Speech); (see Exhibit C for complete transcript of the Speech). Arrangements for the Speech were handled by the Publisher and ABC, as were all Book Tour events. The forum for the Speech was a luncheon hosted and paid for by NPC (A.J. Decl. ¶ 17). Carson spoke for approximately thirty (30) minutes and his comments were followed by audience questions and answers, moderated by Mr.

Hughes of NPC, for a period of approximately twenty (20) minutes. After making his formal comments, Carson conducted a book signing session for approximately twenty (20) minutes (A.J. Decl. ¶ 19).

15. Carson traveled from New York City (NYC) to Washington, D.C. (D.C.) on the evening of October 8<sup>th</sup> and stayed at a hotel in D.C. so as to enable his timely attendance for a scheduled 7:00 a.m. appearance on the *Good Morning America* program. Additional Book related interviews continued after Carson's appearance on that program until arriving at the NPC at 11:45 a.m. The activities on October 9<sup>th</sup> were all booked by the Publisher for interviews and presentations regarding the Book (A.J. Decl. ¶¶ 18 & 19).
16. All signage and promotional material were handled by NPC without in-put or prior approval of the Publisher or ABC. All expenses associated with Carson's Speech at the NPC were paid for by the NPC (A.J. Decl. ¶ 19).
17. In addition to the Speech at the NPC, Carson had various other Book Tour responsibilities and interviews that same day in D.C. There were no CAI related activities that were scheduled for that day for Carson in D.C., nor did Carson attend any CAI related activities that day that were not on the schedule (A. J. Decl. ¶¶ 18 & 20).
18. Carson departed from the NPC to Dulles airport by car for a flight to Columbia, South Carolina for Book Tour related appearances scheduled for October 10, 2015. During his travel to the airport, Carson conducted two (2) additional radio interviews by telephone (A.J. Decl. 20).
19. The purpose for Carson to be in D.C. on October 9<sup>th</sup> was exclusively for Book Tour related events. Therefore, in accordance with the terms of the Contract, the Publisher paid for the hotel and related expenses in D.C. and for the transportation from NYC to D.C. and from D.C. to Columbia, South Carolina (A.J. Decl. ¶ 18).
20. Though the events on October 9, 2015 in D.C. did not involve any CAI events (A.J. Decl. ¶ 18), there were other times during the Book Tour when the schedule provided personal time for Carson. There were several such personal time availabilities when Carson would make use of the time for CAI related meetings (A. Jones Decl. ¶ 12) Prior to the commencement of the Book Tour, the CAI general counsel advised Jones, Yates and the CAI comptroller of allocation protocols that were to be followed in order to assure compliance with the Act relative to allocation of expenses issues between CAI and Book Tour expenses (Protocols). Each day's events during the

Book Tour were reviewed by the general counsel, Jones, Yates and the comptroller, prior to the Book Tour, to determine if there were allocation issues that would arise during the Book Tour (A.J. Decl. ¶13). If so, the specifics of the event were reviewed and appropriate allocations were determined in accordance with the Protocols and subsequently applied by the comptroller. (A.J. Decl. ¶14).

21. General protocols for allocations in accordance with the Regulations and FEC advisory opinion guidelines were utilized by CAI staff in the determination of appropriate allocations.
22. Sealy Yates, or one of his law partners, serving in the capacity of literary agent for Carson, personally accompanied Carson on all segments of the Book Tour, except on October 21, 2015. One of the reasons for them accompanying Carson was to ensure that the established protocols were diligently observed for FECA compliance purposes. In addition to the general protocol that CAI and the Publisher were responsible for their respective expenses, another such protocol prohibited CAI staff or consultants from participating or providing service for any of the Book Tour event(s). There was full compliance with that protocol and all others. (S.Y. Decl. ¶ 15).

## II. Legal Arguments

- A. The Complaint fails to state sufficient facts to support the generic allegation that the Book Tour, as a whole, constituted a prohibited contribution to CAI.

An underlying issue presents itself in the Complaint that Respondents believe must be addressed as a preface to the specific legal arguments which will directly address the NPC Speech and the *Fox and Friends* allegations.

A concern, which has historically been expressed by the Commission in matters dealing with book publications and corresponding book promotions by an individual who is also a federal candidate, is whether the purpose of publishing the book and its corresponding promotion is primarily to influence the candidate's election or does it constitute a *bona fide* contractual employment (see AO 2011-02 (*Brown*) and AO 2014-06 (*Ryan*)).

To fully respond to this issue as presented in the Complaint, it must be addressed on several different levels.

First, the Complaint makes a general insinuation that the publication of the Book and the entire Book Tour were undertaken to influence Carson's presidential campaign (see Complaint pp. 3-4

citing to footnote 16 therein). However, but for the factual statements associated with the NPC Speech and the *Fox and Friends* appearance by Carson, the Complaint fails to state, "...a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction;" (see 11 CFR 111.4(d)(3)). The secondary sources cited by the Complainant in an attempt to substantiate the Complaint's allegation (e.g., see Complaint, footnote 12, Resnick and Woodruff, *Did Ben Carson Already Break Campaign Laws?*) also fail to set out clear and concise facts; rather, those secondary sources similarly speculate that as a result of the Book Tour a violation *may* have occurred.

Therefore, but for issues related to the NPC Speech and the *Fox and Friends* appearance, the Complaint has failed to set forth sufficient facts upon which Respondents are able to provide a specific factual and legal rebuttal or upon which the Commission could make a reason-to-believe finding.

Secondly, notwithstanding the failure of the Complaint to set out "clear and concise" facts regarding the generic allegation that the entire Book Tour constituted a violation of the Act, Respondents will proffer facts and legal analysis that will negate any reasonable grounds for such a broad based accusation.

B. The Commission has long recognized that an individual has the right to continue employment and receive compensation for such employment while simultaneously seeking election to federal office.

The mere fact that an individual becomes a candidate for federal office does not necessitate that the individual forego employment or revenue generating activities not associated with the candidate's campaign. The Federal Election Regulations (Regulations) and an extensive line of Commission advisory opinions (AOs) provide specific recognition of this point and describe in detail the conditions upon which such revenue generating activities may be undertaken in compliance with the FECA. Since 1977, the Commission has acknowledged an individual's right, albeit not an unfettered right, to "pursue gainful employment while a candidate for Federal office" (see AO- 1979-74 (*Emerson*), page 1 citing to AO 1977-45). To this issue there is no dispute.

Though candidates are entitled to undertake employment while simultaneously seeking federal elected office, the corresponding concern expressed by the Commission in these employment situations is whether the compensation paid to the individual constitutes a contribution to the candidate or does it constitute a payment for *bona fide* services at a rate commensurate with market rates for a similarly qualified person and consistent with the employer's usual employee policies that would be followed with other similarly situated employees. See, AO 2006-13 (*Spivack*); So long as the (law) firm follows the practices of its long-established compensation

plan, the firm's compensation to (the candidate) will not constitute a contribution to him or his committee; the employment must be "genuinely independent" of his candidacy; also, AO 1992-3 (*Reynolds Metal*); Because the policy/decision to continue providing the employee full benefits was not created specifically for the employee/candidate, the employer could continue to provide benefits to the employee/candidate; also, AO 2004-17 (*Klein*); A congressional candidate was permitted to accept part-time consulting work with law firm based upon an hourly rate of compensation that was consistent with that of other similarly qualified consultants providing similar services.

The question then becomes whether the compensation for services is given to the candidate pursuant to an arms-length agreement so as not to constitute a contribution to the candidate or candidate's committee.

- C. The Regulations articulate a three-prong test to determine if compensation paid to an individual who is seeking election to federal office constitutes a prohibited or excessive contribution.

The Regulations set forth a three (3) prong test for determining whether compensation paid to an individual who is seeking election to federal office is deemed exempt from being considered a contribution/expenditure by the employer. The Regulations at 11 CFR § 113.1(g)(6)(iii) state that payment of compensation to a candidate is considered to be a contribution unless:

- (A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;
- (B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and
- (C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

1. The publication of the Book and the corresponding Book Tour, were undertaken by Carson pursuant to *bona fide* employment which he has pursued as his primary means of personal income for several years prior to becoming a federal candidate.

As detailed in the Factual Summary (FS) above, Carson has had a long and distinguished career as an author and an inspirational speaker, commencing during his tenure at Johns Hopkins University, Department of Neurosurgery (JHU) and extending to a greater level since his 2013 retirement from JHU. In light of the extensive number of publications authored by Carson over a number of years and his paid speeches, together having constituted his primary source of revenue during the preceding four (4) years (see FS at ¶¶ 1, 8 & 9), there is no reasonable argument that



Carson's contract with the Publisher constituted anything less than *bona fide* employment. His paid speech engagements and book publications constituted his *bona fide* primary source of employment and income <sup>5</sup> during the several years immediately preceding his federal candidacy in May of 2015. Since making paid speeches and authoring books constituted Carson's *bona fide* source of employment during the years preceding his candidacy, there is no inherent legal basis that would prohibit Carson from continuing that line of employment during the time when he was also a candidate for federal public office.

The publication of the Book and the corresponding Book Tour were *not* the result of what has often become the standard procedure for presidential candidates; namely, the first time authorship of a book reflecting views on public policy issues as an ostensibly lawful adjunct to an individual's presidential campaign efforts.<sup>6</sup> Note, unlike these typical candidate books in which it is the candidate who is in search of a publisher, it was the Publisher who approached Carson to suggest that he author the Book. The Publisher had well founded business reasons for making the request of Carson in light of his two (2) most recent successful New York Times Bestsellers List publications, *America the Beautiful* and *One Nation*. (S.Y. Decl. ¶10).

To underscore the veracity and purpose of the Publisher's request for Carson to author the Book, note that the negotiations for the Contract for the publication of the Book and the corresponding Book Tour were entered into one (1) year prior to the time of him becoming a federal candidate (S.Y. Decl. ¶ 10; FS ¶ 10). All evidence indicates that the Contract was one which would have been tendered and entered into by Carson, regardless of whether Carson was a candidate for federal public office. There is neither any evidence submitted nor even an allegation in the Complaint that the purpose of the Contract tendered to Carson was predicated upon Carson's candidacy nor published in anticipation of a candidacy. The evidence indicates that based upon Carson's previous successful publications, the Contract would have been tendered to Carson notwithstanding his candidacy (FS ¶¶ 10 & 11). Therefore, the Contract that was tendered and accepted by ABC (on behalf of Carson) was independent of his candidacy.

In accordance with the first prong of the Regulation exemption, the proffered evidence supports the position that Carson entered into the Contract with the Publisher based upon a *bona fide* employment opportunity independent of his candidacy.

2. The royalty payment set out in the Contract and paid to Carson was exclusively in consideration of the services which he provided to the Publisher in the form of writing the Book and fulfilling the Book Tour obligations as set out in the Contract.

<sup>5</sup> For example, see Carson OGE Form 278e filed with the Commission in June of 2015.

<sup>6</sup> See Exhibit C attached hereto.

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The compensation received by Carson for authorship and publication of the Book was negotiated and agreed upon between a well-established and professional Publisher on an arms-length base with a long time and well respected literary agent (FS ¶¶ 11, 6 & 7) on behalf of Carson. Carson fulfilled each of the Contract mandated services namely, the writing the Book and subscribing to the contractually agreed upon number of weeks for the Book Tour activities in exchange for which he was entitled to receive the royalty payments specified in the Contract (S.Y. Decl. ¶¶ 11 and 12).

The Contract required Carson to dedicate three (3) weeks of his participation in the Book Tour (FS ¶ 12).

In relevant part, the Contract stated as follows:

"It is a material term of this Agreement that the Author will make himself available for *reasonable* publicity appearances on behalf of the Work at places and times requested by the Publisher in consultation with the Author for a period of three (3) weeks at the time of the Publisher's initial hardcover publication of the Work. The Publisher will provide the Author with reasonable notice prior to such event as to which three (3) weeks it desires the Author to make himself so available. The Proprietor represents and warrants that the Author has not nor will have, prior to the publication of the Work, any existing contractual commitments or obligations to seek third party approval that could prevent him from making such appearances."  
(emphasis in original) (FS ¶ 12).

As a component of the service obligations which were required of Carson under the Contract, the three (3) week Book Tour commitment constituted a standard business practice in the publishing business. The Book Tour consists of traveling to multiple states for media appearances and book signing engagements. The number of days required for the author's appearances will often depend upon the level of advance royalties paid to the author (FS ¶ 13; S.Y. Decl. ¶ 12).

Carson fulfilled the contractual time requirement of three (3) weeks during which he participated in the Book Tour and did not cut short that time commitment for CAI related activities (A.J. Decl. ¶ 10) (compare to AO 1980-115 (O'Donnell): Since compensation paid to (the candidate) by the (law) firm would not be reduced to reflect the lower number of hours the candidate would work for the firm because of his candidacy, there would be a contribution, unless there was an indication the candidate's value to the firm throughout the year had increased to offset the reduction in his billable hours (see also, AO 1980-115 at page 3).

Carson was not required and did not perform any other services as a condition of receiving compensation under the Contract. His contractual obligations consisted of writing the Book and

fully participating in the Book Tour activities, each of which he successfully completed. By fulfilling the service obligations pursuant to the Contract, Carson complied with the second prong of the § 113.1(g)(6)(iii) requirement that all services are to be performed for which the compensation is paid.

3. The royalty paid to Carson was negotiated on an arms-length basis and did not exceed the compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

Carson's primary means of personal income subsequent to his retirement from JHU has been paid speeches and royalties for his authorship of various books (FS ¶ 1)<sup>7</sup>. He has a proven and successful record within the publishing world as an author (FS ¶¶ 8 & 9) and the terms and royalty payments he received for the Book and the Book Tour commitments were commensurate with industry standards for one who had authored multiple New York Times Best Seller List publications. Carson would have received similar terms, conditions and royalties from most other publishers (S.Y. Decl. ¶ 13).

The compensation Carson received for his services of authoring the Book and participating in the Book Tour represented the standard royalties paid based upon someone with Carson's previously successful publications and the number of Books anticipated by the Publisher that would be sold. This was a traditional arms-length compensation arrangement negotiated between Carson's literary agent and the Publisher (S. Y. Decl. ¶¶ 11 and 12).

Carson therefore fulfilled each of the three (3) prongs of the § 113.1(g)(6)(iii) contribution exemption test and therefore, the royalty paid to Carson by the Publisher, pursuant to the Contract, did not constitute a contribution or expenditure to Carson or CAI by the Publisher.

In summary, Carson had an unquestionable right under the Act to continue his source of employment and livelihood while a federal candidate, provided the compensation he received was commensurate with the services he provided. In accordance with the Regulations, Carson pursued his previously established regular *bona fide* employment while he was a federal candidate. The compensation received by Carson was established pursuant to an arms-length contract negotiated by a long time and well respected literary agent with a well-known and established publisher. The terms and conditions of the Contract reflected industry standards for an author with the reputation and established credentials of Carson. Therefore, Carson's publication of the Book, the royalties received and his fulfillment of his Book Tour obligations

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<sup>7</sup> Carson also received investment income and director fees during this time period, as noted in his OGE Form 287e, filed with the Commission in June of 2015. That same document evidences that the majority of Carson's income during the preceding year was the result of his various speaking engagements and book publications.

pursuant to the Contract were in full compliance with the Commission Regulations and applicable advisory opinion guidelines.

D. Contrary to statements in the Complaint, the concept of "mixed use" travel, is permissible pursuant to the Act and is routinely utilized, especially by incumbent Members of Congress.

As noted above, the Complaint appears to allege three (3) situations upon which a violation of the Act may have occurred during the course of the Book Tour. Allegations pertaining to the NPC Speech and the *Fox and Friends* appearance are both rather clearly set-out. Both of these events are addressed in a dedicated response below.

The third potential allegation, as noted above, could be construed as a generic statement thread throughout the Complaint alleging that the Book Tour, as a whole, which was paid for by the Publisher, was an attempt to influence Carson's presidential campaign. "According to multiple, widely distributed media reports it appears likely that Dr. Carson's book tour appearances have functioned as campaign stops. As such the associated cost for travel, lodging, and promotional materials that were paid for by Sentinel at no cost to the Carson campaign represent an-in-kind contributions." (Complaint at p. 5).

This issue has been initially addressed above relative to Carson's *right* to pursue employment and receive compensation from the Publisher for his services related to the Book publication and Book Tour, albeit occurring during his campaign. Respondents have acknowledged that during Carson's scheduled personal time during the Book Tour, he met with people in several cities to discuss CAI activities (A.J. Decl. ¶ 12). In light of that fact, a second issue arises. Notwithstanding Carson's right to participate in the Book Tour as part of his *bona fide* employment, the corresponding question posed is what policies and procedures did CAI employ during the Book Tour to be assured the expenses incurred were properly allocated between CAI and the Publisher in compliance with the FECA.

As a preface, the concept of "mixed travel," that is travel involving both campaign and non-campaign activities, is permissible under the Act. The Regulations specifically address the issue at 11 CFR § 106.3.<sup>8</sup> Mixed travel is an occurrence which is routine with the President or incumbent Members of Congress. Their travel may involve campaign related matters under the jurisdiction of the FECA and activities on the same trip that constitutes official government activity. The Commission has permitted this type of activity on a routine basis. Thus, contrary to the implications of the Complaint and the various secondary newspaper sources cited in the Complaint, "mixed travel" for candidates, especially incumbents, is not only permissible but

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<sup>8</sup> Carson neither sought nor accepted federal funds pursuant to 11 CFR part 9005 or 9036. Therefore the provisions of 11 CFR § 106.3 are applicable.

rather routine. The mere fact that Carson conducted both personal business and CAI activities during the Book Tour (A.J. Decl. ¶ 12) is permitted under the Act. The FECA standard of review to be applied to the analysis for mixed use travel by a Member of Congress is not different than the one to be employed for Carson's mixed travel Book Tour activities.<sup>9</sup>

Contrary to the generic allegation in the Complaint, Respondents took extraordinary measures to be assured that the Book Tour complied with the FECA allocation mandates and the various advisory opinions issued by the Commission on the subject (A.J. Decl. ¶¶ 13 & 14). The Book Tour and any Carson campaign related activities that occurred during the Book Tour, were handled in a professional manner subscribing to the Protocols established by CAI general counsel based upon applicable FECA mandates and articulated Commission standards (A.J. Decl. ¶¶ 15 & 16).

E. The Respondents were well aware of the FECA requirements for conducting the Book Tour during Carson's presidential campaign and conducted that Book Tour in full compliance of the FECA and Commission guidelines.

In accordance with the terms of the Contract, all expenses related to the Book Tour were to be paid for by Publisher (A.J. Decl. ¶ 11). Any CAI related activities were identified and paid for by CAI. The criteria used to identify, segregate and value those CAI activities were based upon not only the Regulations but guidance provided through the various Advisory Opinions issued by the Commission related to these types of "mixed use" activities and services.

The vast majority of activity during the Book Tour was dedicated to interviews, media appearances about the Book, Book signings and related Book Tour events that were all arranged by the Publisher (A.J. Decl. ¶ 12). CAI events were the unique exception to those Book Tour events. Prior to the commencement of the Book Tour, a thorough review of each day's calendar of events of the Book Tour were reviewed by CAI general counsel, Yates, Jones and the CAI comptroller. The applicable analytical procedure employed by CAI general counsel and Yates, as literary agent for the Book Tour, was to first determine which events were campaign related and which were non-campaign related.<sup>10</sup> Secondly, based upon the Protocols, CAI undertook an analysis of the allocation formulas to be utilized to determine which source was responsible to pay which event expenses. Payment of CAI expenses included travel, hotel, CAI staff, meals and all related activity expenses (A. Jones Decl. ¶¶ 13 & 14).

Prior to the commencement of the Book Tour, the CAI general counsel provided advise to Jones, Yates and the CAI comptroller as to the appropriate allocations which should be implemented for

<sup>9</sup> Respondents recognize that there are some distinctions (e.g., prohibition on use of private aircraft) but the distinctions are not relevant to the issues at issue.

<sup>10</sup> These may consist of personal activities of Carson, to include the Book Tour related matters or his personal expenses not associated with the Book Tour which could not be paid for with CAI funds (11 CFR § 113.1(g)).

mixed travel related expenses collectively designated as allocation protocols presented below (FS ¶ 20; A.J. Decl. ¶ 13). Jones was the one person retained by both ABC and CAI for purposes of coordinating the travel and logistical calendars of Carson for both entities (A.J. Decl. ¶¶ 8 & 9). She had extensive experience in providing logistical travel coordination services (A.J. Decl. ¶¶ 3 & 4), and could appreciate the level of detail required by one to thoroughly and accurately identify those events requiring allocation of expenses between the Publisher and CAI. Jones was intricately involved in the implementation of the various events related to the Book Tour (A.J. Decl. ¶ 10). She utilized her expertise in fulfilling her duties for the logistics and allocation issues which were involved in the Book Tour (A.J. Decl. ¶ 15).

Jones, Yates, and the CAI comptroller conferred with CAI general counsel, Paul Sullivan, regarding the allocation protocols that would be utilized to determine if an event/expense was required to be paid in full or a portion allocated to CAI for payment. Jones had on-going conferences with Yates and the CAI comptroller regarding Book Tour events and allocation issues to ensure compliance (A.J. Decl. ¶ 13).

These general Protocols were developed prior to the commencement of the Book Tour, (A.J. Decl. ¶ 13) and were based upon applicable provisions of the Regulations, Commission Guidelines and advisory opinions and took into consideration the Contract obligations of Carson and CAI activities for purposes of establishing FECA compliance guidelines for Carson, Yates, and CAI staff. In accordance with the Contract, the Publisher was to pay for all of the Book Tour related expenses. However, the Publisher was prohibited from paying any expense associated with CAI events or related expenses.

Specifically, if Carson incurred any campaign expenses, other than in a *de minimis* amount, at any stop, those travel expenses to and from that stop were considered campaign related and were paid for by CAI for Carson and CAI staff, if any, who accompanied Carson on that campaign related stop, as were all collateral expenses such as meals, hotel, and event expenses (11 CFR § 106.3(3)); see also, FEC Congressional Candidates and Committees, at p. 41) (A.J. Decl. ¶ 15).

The agreed upon Protocols also indicated that in accordance with the Contract, those portions of a stop which pertained to the Book Tour were paid for by the Publisher; e.g., cab or private car service. No CAI funds were used to pay for expenses associated with Carson's personal expenses or those associated with the Book Tour (A.J. Decl. ¶¶ 15 & 16).

CAI staff or consultants were not permitted to participate in Book Tour events and the evidence establishes that Protocol was diligently observed (S. Y. Decl. ¶ 15). If CAI staff was required for a CAI event, that staff person picked-up Carson at a location and delivered him back to the location after the CAI event. In those situations, staff and related expenses were paid for by CAI and not the Publisher.

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Protocols also required that there was to be no single event at which both Book Tour and CAI activities would be conducted. Staff was also made aware of the FECA prohibition on the use of CAI funds for the personal use of Carson, to include Book Tour activities. A portion of the Protocol's advice provided to staff included a briefing that any use of CAI funds to pay more than a *de minimis* amount for Book Tour related expenses, could constitute a violation of the FECA's prohibition on use of campaign committee assets for the personal use/benefit of the candidate (Advisory Opinion 2006-07: "...expenses associated with marketing a book that a commercial publisher has published and for which it pays royalties to the author are expenses that exist irrespective of the candidate's election campaign or duties as a holder of Federal office." see also MUR 6518 First General Counsel's Report, pp. 12-14; and MUR 6127, First General Counsel's Report, pp. 5-8). Based upon these authorities, the Protocols provided advice to staff of the prohibition of using CAI funds for payment of Book Tour event expenses. The Protocols were followed and no such payments by CAI for Book Tour expenses were made (A.J. Decl. ¶¶ 14 & 16).

CAI staff and Yates were advised and aware that there is often a narrow compliance window for candidates undertaking mixed use travel. The candidate is exposed to a potential violation of the Act if campaign funds are utilized to pay for expenses associated with a candidate's non-campaign related travel that would exist regardless of the candidacy (11 CFR §113.1(g); see also, AOs. 2000-02 and 1996-34). On the other hand, if the Publisher paid for expenses associated with campaign activities it would have resulted in an excessive contribution.<sup>11</sup> Great care and attention was given to reviewing each component of the entire Book Tour to make sure each specific activity was reviewed and paid for by the appropriate entity; the Publisher or CAI (A. Jones Decl. ¶ 16).

The set of Protocols as presented above, were established by the general counsel and governed the allocation formulas that would be used for the Book Tour mixed use travel issues. Those Protocols were followed by Jones, Yates and the comptroller without exception for each of the various Book Tour events and associated expenses (A.J. Decl. ¶¶ 14, 15 & 16).

As noted above, each stop and event of the Book Tour was reviewed and analyzed by CAI general counsel and the Protocols were applied for each stop and event. Those Protocols were conveyed to Jones, Yates and the comptroller (A.J. Decl. ¶¶ 13 & 14). Each stop and each event at those stops were reviewed by Jones, Yates, the comptroller and the general counsel to determine if an allocation of associated expenses was required to be paid for by CAI (A.J. Decl. ¶ 13).

<sup>11</sup> In view of the fact that the Complaint claims Sentinel is an LLC, the excessive in-kind contribution would only constitute an excess contribution ( 52 U.S.C. § 30116) but would not constitute a prohibited contribution (52 U.S.C. § 30118).

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Though the Protocols and allocations were in place prior to commencement of the Book Tour, an additional precaution was adopted to have a procedure in place for unforeseen allocation situations arising during the Book Tour. As noted earlier, Yates, an experienced practicing attorney (S. Yates Decl. ¶¶ 2, 3 & 4) has served as the literary attorney for Carson since May of 2010 and was thoroughly brief by the CAI legal counsel on the allocation Protocols that would control the Book Tour. In that capacity as Carson's literary attorney,<sup>12</sup> either he or his law partner, Matthew Yates, personally accompanied Carson on all segments of the Book Tour except for one day, October 21, 2015. One of the collateral duties of Yates was to make certain that the protocols were diligently observed and complied with for each event of the Book Tour (S. Yates Decl. ¶ 15).

Unlike some previous advisory opinion matters before the Commission, in accordance with the designated Protocols, there were to be no "dual purpose events" on the Book Tour and no use of Publisher assets to pay for CAI events. These "dual purpose" events would constitute an event at which Book Tour events (e.g., book signing) and CAI activities would occur at the same event (compare Advisory Opinion 1982-16; see also MUR 6518). Yates has provided testimony that there were no campaign related activities that occurred at any of the Book Tour events. For those few times that Yates was not with Carson, his law partner, Matthew Yates, provided periodic reports to Yates and none of the reports indicated there were campaign activities during any Book Tour event (S. Yates Decl. ¶ 15).

In similar fashion, one of the adopted Protocols prohibited CAI paid staff or consultants from providing services or participating in Book Tour events. In those situations in which Carson had personal time slotted in the schedule, he occasionally used it to conduct CAI meetings. However, in those situations, CAI staff would pick him up from a given location and return him to the location after the CAI event. None of the CAI travel, staff or meeting cost were paid for by the Publisher (S. Y. Decl. ¶15). (Compare to MUR 6518, First General Counsel's Report, p. 10: "Here, there is reason to believe that, in violation of the Act and Commission regulations, Gingrich Productions provided in-kind goods and services for events that had the purpose of furthering Gingrich's presidential campaign (citations omitted)...Gingrich employees may have assisted the Gingriches (sic) at campaign-related events while being compensated for that work and travel by Gingrich Productions.").

This summary of the CAI general compliance protocols and procedures is proffered as evidence of the detailed attention and specific procedures which CAI followed for specific events and to make certain that they complied with the various components of the FECA and administrative guidelines for mixed use travel. The Complaint fails to state sufficient facts, other than the two (2) events that are discussed below, to enable the Respondents to provide specific allocation

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<sup>12</sup> Yates was not a paid staff or Consultant of CAI.



arguments to the generic allegations. The burden is on the Complainant to set forth a clear set of facts to which the Respondents are able to respond (11 CFR § 113.4 (3)). Short of a set of more specific facts, not mere speculation, Respondents cannot provide a further or more extensive response to the generic allegation. Additionally, the Complaint fails to point to any cross reference in the various news articles which provides any specificity of facts to enable the Respondents to answer with targeted factual and legal responses other than the generic procedural guidelines to which Respondents adhered for the Book Tour.

- F. The appearance and speech by Carson at the National Press Club was a Book Tour event and did not require any payments or reimbursements by CAI to any third party entity in order to be in compliance with the FECA.

The first of the specific factual allegations in the Complaint appears to be based upon the Speech given by Carson at the National Press Club, alleging it constituted a campaign related activity rather than a Book Tour event. For the following reasons there is no factual or legal justification for such a claim.

1. The prepared comments and response to questions by Carson at the NPC did not constitute express advocacy made to influence his election and therefore was not subject to the Act.

In order for the Speech to constitute a contribution or expenditure pursuant to the Act, its content would be required to meet the definition of "express advocacy" (*McConnell v FEC*, 540 U.S. 93, at 193 (2003); *FEC v Wisconsin Right to Life, Inc. (WRTL)*, 551 U.S. 449 (2007)).

The Regulations define "express advocacy" as:

Any communication that contains explicit words such as "vote for the President", "support the Democratic nominee", "cast your ballot for the Republican challenger"; or

"When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
- (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action" (11 CFR 100.22(a) and (b)).

Short of the use of explicit words of advocacy, the so-called "magic words", the courts have consistently found that the communication must be the "functional equivalent" of express advocacy in order for it to be considered a contribution or expenditure. ("Because WRTL's ads may reasonably be interpreted as something other than an appeal to vote for or against a specific candidate, we hold they are not the functional equivalent of express advocacy."; (*Wisconsin Right To Life, (WRTL)* at 471); "As explained by THE CHIEF JUSTICE's controlling opinion in *WRTL*, the functional equivalent test is objective, 'a court should find that (a communication) is the functional equivalent of express advocacy only if (it) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'" (*Citizens United*, 558 U.S. 310 (2010), citing to *WRTL*, at 469-470).

Against this "functional equivalent" standard of review, none of the direct comments by Carson or his responses to questions from the audience constituted express advocacy for his election or opposition to any other candidate's election.

The Complaint cites to three (3) comments from the Speech to evidence it contained express advocacy. Those are the following:

1. "At this event (NPC) however Dr. Carson spoke at length about policies that he would implement as President including noting that 'under a Carson administration, if another country attacks us with a cyber-attack, they're going to get hit so hard, it's going to take them a long time to recover.'" (citation omitted) (Complaint at page 2).
2. "Dr. Carson then went on to answer questions about how he as President would approach the situation in Syria saying that he would establish a 'no-fly zone in conjunction with Turkey'" (citation omitted). (Complaint at pp. 2-3).
3. "Dr. Carson also noted that in his first three months in office he would call for a joint session of Congress to inform them that 'under a Carson administration, we recognize that the people are at the pinnacle, and that we work for them, and they don't work for us.'" (citation omitted) (Complaint at p. 3).

Clearly, none of these three (3) statements contain explicit or "magic words" that constitute express advocacy, nor does any portion of the Speech. Neither the Speech nor any of Carson's three (3) statements in response to questions alluded to above, constitute the functional equivalent of express advocacy which advocates the election of Carson or the defeat of any other candidate.

In the first of the three (3) statements above, the Complainant concedes, "... Carson spoke at length about *policies* he would implement as President." (emphasis added). Carson's comments reflected his views on current public policy and world event issues none of which were stated in the context of his election or even a call to action in general to support his articulated policy position.

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The discussion of issues, even when in reference to a named federal candidate does not measure up to the functional equivalent of express advocacy. (MUR 6122 (*NAHB*) at p. 9; "While the mailer was sent immediately prior to the general election, the focus of the communication is on issues and Miller's positions on those issues. Given the lack of any clear directive other than to "Thank" Miller for his positions, and taking the communication as a whole, one can reasonably view the mailer as praising Miller's positions and encouraging him to maintain those positions in the future, and not as encouraging the reader to vote for or against Miller in the upcoming election.") (see also MUR 6589 at pages 13-14 which presents various communications that the Commission held do not constitute express advocacy whose content is far closer to the functional equivalent of express advocacy than any of the comments attributed to Carson in the Speech.<sup>13</sup>).

The Book, *A More Perfect Union: What We the People Can Do to Reclaim Our Constitutional Liberties*, obviously deals with the Constitutional impact of many current issues and how government approaches the issues within the confines of the Constitution. The first allegation regarding response to a cyber-attack is a reference to Carson's comments at page 9 of the Speech. However, the paragraph preceding that reference frames the context in which Carson discusses the issue; namely, the Constitutional duty of government to provide for the common defense (Speech at p. 8). Providing for the national defense must be framed within the context of a government administration since that is the entity in which the Constitution vests that authority. The mere use of the phrase "Carson administration" for those purposes is proposing a hypothetical situation; not one that calls for the election of Carson. The use of that one phrase "Carson administration" sets a hypothetical framework but does not approach causing the entire comment, let alone the Speech as a whole, to constitute the functional equivalent of express advocacy calling for his election.

In the second and third scenarios cited to in the Complaint, Carson is responding to questions posed by Mr. Hughes, the moderator restating questions from the audience. With respect to the no-fly zone, it is Mr. Hughes who frames the issue as, "How would you as President approach the Syrian situation?" (Speech p.10). Carson's response comments solely upon the issue of an approach to take with Syria and does not reference himself acting in the capacity of President or a "Carson administration" (Speech pp. 10-11). Again, this is solely a comment related to a current public policy issue and does not approach the functional equivalent of express advocacy for Carson's election.

Similarly in the third scenario, Mr. Hughes again framed the question with the hypothetical of what Carson would do to be different, "In your first three months in office..." (Speech p. 12).<sup>14</sup>

<sup>13</sup> Although the communications in this MUR did not constitute express advocacy, the Commission did cite to them as indicia of the "major purpose" of the organization for purposes of determining if it was required to file as a political committee. That registration issue is not relevant to the issues in this MUR.

<sup>14</sup> Even in the event the framing of the question by Mr. Hughes in the context of "if you were president" or "Carson administration" was somehow considered an indicia of express advocacy (which I strongly disagree), Carson had no

Carson's comment in response to the question speaks in terms of how we as a nation must come together to work out issues. Carson makes no reference to himself as President or as a candidate when providing his response. Again, there is no statement that comes close to advocating the election of Carson.

Each of these three (3) scenarios consist of Carson opining on various domestic and international issues against the backdrop of his Book about the Constitution and the respective Constitutional powers or limitations which impact these various issues.

From these comments, one could not determine if Carson was seeking election or not. To the contrary; the comments are only susceptible to no other reasonable interpretation other than Carson opining on public policy issues as an author of the Book and in response to direct questions about the specific issues raised by the moderator.

The hypothetical frame work, suggested by Mr. Hughes in his questions to Carson could be, and often is, utilized to place the speaker's comments in the context of one empowered to take action on a particular issue. That does not convert the responses into an election influencing communication. The Speech as a whole and each of the three (3) scenarios cited in the Complaint is more than reasonably susceptible to an interpretation that they were not communicated for purposes of advocating support for Carson's election but rather as a collection of comments on current public policy and international issues.

Therefore, there is not a reasonable basis to conclude that the Speech in whole, or any part, constituted the functional equivalence of express advocacy.

2. Assuming arguing that the Speech constituted "express advocacy", the National Press Club event comes within the Act's "press exemption" thereby eliminating the allegation that any associated expenses should have been paid for by CAL.

The Act and the Regulations exempt from the definition of expenditure and contribution the cost of covering or carrying a news story, commentary or editorial by any broadcasting station, Web site, or other periodical publication, including any Internet or electronic publication provided the facility is not owned or controlled by any political party, political committee or candidate (52 U.S.C. § 30101(9)(B)(i)), 11 CFR §§ 100.73 and 100.132).

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control as to how Mr. Hughes framed the question and his responses were made in the context of how the question was posed.

“Thus, under the Act and the Commission regulations, unless a press entity’s facilities are owned or controlled by a political party, political committee, or candidate, the costs of distributing any news story, commentary, or editorial distributed through the enumerated media are neither contributions nor expenditures. To determine whether the press exemption applies, the Commission first asks whether the entity engaging in the activity is a press or media entity. (citations omitted). Second, the Commission has applied the two-part analysis presented in *Reader’s Digest Association v FEC*... (citations omitted)” ( FEC Advisory Opinion (AO) 2008-14 at page 4).

An entity which is in the business of producing programs that disseminates news stories or commentary on a regular basis constitutes a press entity (“The Commission has concluded in previous advisory opinions that *entities disseminating news*, commentary and editorials through a Web site qualify for the press exemption. *See, e.g.,* Advisory Opinions 2005-16 (Fired Up!); 2004-07 (MTV); and 2000-13 (i NEXTV).” (*Id.*, emphasis added).

The press entity does not lose its eligibility to claim protection under the press exemption even if the news story, commentary or editorial constitutes express advocacy for the election or defeat of a federal candidate (*Id.* at page 4-5; citing to Advisory Opinion 2005-16 (Fired Up!) (citing to First General Counsel’s Report, MUR 5440 (CBS Broadcasting, Inc.); Advisory Opinion 2005-19 (Inside Track) (citing same).

NPC qualifies as a press entity for purposes of coming within the Act’s press exemption. From 2010 through 2015, NPU sponsored on average, eighty-five (85) speakers per year, who are in the news related to, business, public policy or politics, each speech of which was *broadcast and distributed* by NPC through such broadcast platforms such as NPR, C-SPAN and the Internet (see <http://www.press.org/speakers/transcripts>). The hosting and distribution of these types of speeches, including the Speech delivered by Dr. Carson, clearly did not serve as an “active participation in core campaign or electioneering functions.” (Melothe, p.5). To the contrary, these events, including the Speech by Carson, fulfill a “legitimate press function” and thereby meet one of the Commission’s pronounced criteria for invoking the press exemption.

Secondly, the NPC is not owned or controlled by any candidate, party committee or political committee (see [www.press.org](http://www.press.org)), let alone by Carson.

As noted above, Respondents do not consider the Speech to have constituted express advocacy and therefore, any expenses paid by the Publisher or NPC associated with the Speech do not constitute a contribution or expenditure to CAI. Notwithstanding that position by Respondents, the press exemption applies to the Speech and the associated expenses incurred thereby eradicating any basis upon which Complainant’s claims can be substantiated under the Act.

Respondents have factually and legally met each of the statutory, regulatory and Commission's supplemental components for invoking the press exemption for any and all expenses incurred related to the Speech.

As a concluding note, the expenses associated with the sponsorship for the Speech (room, luncheon severed to guest, etc.) were neither paid for by CAI nor the Publisher. Those expenses were paid for by NPC. If under some unimaginable rational the Commission determined the Speech constituted express advocacy, it is NPC who would also incur exposure for the making of a prohibited in-kind corporate contribution to CAI. NPC was not a named Respondent in the matter and I am unaware if NPC has been provided notice of such a potential violation. That said, the Commission should afford NPC the opportunity to comment on the situation in light of the potential exposure, if there is the slightest consideration that the Speech somehow constituted express advocacy and could lead to various FECA violations by NPC.

Along those same lines, the NPC has a long recognized and honorable history of providing a platform for newsmakers and public policy leaders to express opinions and debate contemporary issues. Many times, those speakers are Members of Congress or business leaders who are also seeking election to public office. The NPC is truly the type of news making forum that was intended to be exempt from concerns as to whether the comments from an incumbent Member of Congress, who also is seeking re-election, is required to parse phrases or restrict the context of statements less they cause the NPC to make a prohibited or excessive contribution to that Member's political committee. The press exemption was instituted specifically to avoid those types of situations, which could easily lead to arbitrary censorship of political (albeit not election related) and public policy speech.

3. The appearance by Carson on *Fox and Friends* comes within the "press exemption" and therefore did not constitute a campaign related event that was required to be paid for by CAI.

The Complaint claims, through a cross reference to material contained in the Resnick/Woodruff article, that Carson, while appearing on the Fox's News program, *Fox and Friends*, stated, "I don't want to be the establishment candidate." Such a statement, in response to a question from the Fox interviewer does not come close to an "express advocacy" statement that would trigger restrictions under the Act. The Resnick/Woodruff article also indicates, in an apparent response to questions, that Carson stated that he would not have met with the families of victims of the Umpqua shooting if he were president (Resnick/Woodruff at page 3). Once again, Carson was opining on current public policy issues without any reference whatsoever to his campaign or his election efforts.

Notwithstanding the brief comments attributed to Carson in the Resnick/Woodruff article in response to questions by the Fox staff, the entire interview on *Fox and Friends* comes within the press exemption. Therefore, regardless of whether the content of the Carson interview on *Fox* constituted express advocacy, it would not be a violation of the Act since it clearly falls within the press exemption of the Act.

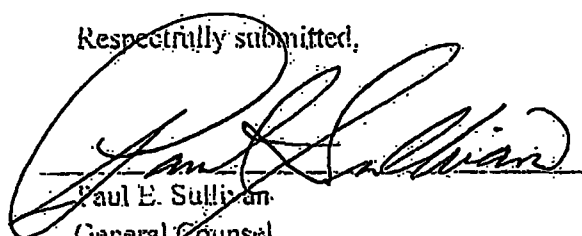
For purposes of brevity, I cross reference the legal compliance standards that are set out above that also constitute the standard of review for the Fox interview of Carson. Fox Network is not owned or controlled by Carson, or any candidate, party committee or political committee. *Fox and Friends* is a regularly schedule news program which airs daily from 6:00 am to 9:00 am on the Fox News Channel (which is a broadcast station).


There is no legal argument that has been proffered arguing that *Fox and Friends* is not a press entity and thus Carson's appearance and comments on that program clearly come within the press exemption of the FECA. Therefore, though Respondents dispute the Complainant's allegation that the comments made by Carson measured up to express advocacy, any expenses associated with Carson's appearance on *Fox and Friends* are exempt from allegations of a prohibited contribution or expenditure by Fox by virtue of the fact the program and all associated expenses are exempt pursuant to the Act's press exemption.

#### IV Conclusion

For the factual and legal reasons set out above, the Complaint fails to evidence a violation of the Act and therefore the Commission should make a finding of no reason to believe and close the file.

Respectfully submitted,

  
Paul E. Sullivan  
General Counsel  
Carson America, Inc. and  
Counsel to Respondents

  
Anton E. Reel  
Sullivan & Associates  
Counsel to Respondents

**1-800-4-A-DRUGS**

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**BEFORE THE FEDERAL ELECTION COMMISSION**

**MUR 6989**

**DECLARATION OF AUDREY JONES**

I, Audrey Jones, the undersigned, do declare as follows:

1. I am Audrey Jones, an individual of majority age and a resident of the state of Florida. I have personal knowledge of the facts set forth herein.
2. Currently, and at all times referenced herein, I have been employed by American Business Collaborative, LLC (ABC) as its Executive Manager. Since Dr. Benjamin Carson's retirement from Johns Hopkins University (JHU) in June 2013, ABC has served as the entity through which Dr. Carson conducts his business activities, including paid speech engagements and book writing and publication activities. Prior to July 2013, I was employed as the Administrative Assistant/Supervisor for Dr. Carson at JHU commencing in 1996.
3. As Executive Manager at ABC, my responsibilities include the logistical coordination with sponsors for all activities related to the unpaid speeches and appearances made by Dr. Carson, and logistical coordination, including travel, with Dr. Carson's speech management company for paid speeches and appearances.
4. Similarly, for matters related to Dr. Carson's publications and the corresponding publicity and book tour activities, I provide coordinating services between Dr. Carson and the publisher for travel, book tour activities, promotional book signings, media scheduling for appearances and interviews and related ancillary activities. I have provided these types of services for the following publications written by Dr. Carson: *The Big Picture* (2000), *Take the Risk* (2006), *America the Beautiful* (2011), *One Nation* (2014) and *More Perfect Union* (2015).
5. In addition to those publications listed above, Dr. Carson has authored the following: *Gifted Hands* (1990); *THINK BIG* (1992); *One Vote* (2014); *My Life* (2015) and *You Have a Brain* (2015).
6. From the period of 2013 through 2015, Dr. Carson contracted to deliver a total of two hundred and two (202) paid speeches. Those consisted of forty-six (46) speeches in 2013; ninety-seven (97) in 2014; and fifty-nine (59) in 2015. Dr. Carson also gave an additional

one hundred thirty-nine (139) paid speeches between the years of 2009 and 2012, prior to the time ABC was organized.

- 1-800-4-VINEYARD, INC.

MUR 6989

Declaration of A Jones

May 11, 2016

13. Prior to the commencement of the Book Tour, I conferred with Paul Sullivan, the CAI general counsel, Sealy Yates and the CAI comptroller, and we collectively reviewed each event for each day of the Book Tour to be assured that the expense related to any specific activity was properly allocated and would be paid for by the appropriate entity, whether it was the Publisher for Book Tour related items or by CAI for campaign related items. Payment reviews and allocations of issues included air and ground travel, hotel accommodations, site expenses for events, including rental of equipment, and personnel.
14. Specific expense allocation protocols and rules were provided by Sullivan to Yates, the comptroller and myself which governed and applied to the allocation formulas which we applied, without exception, to each of the various events and associated expenses encountered (Protocols).
15. In general, the Protocols required that each event and associated expense be identified as one associated with the Book Tour or one associated with CAI activities. If any CAI campaign activity took place at a particular stop, the travel expenses to that stop were allocated to CAI. Each stop and each event at each stop was classified as a CAI or Book Tour event and expenses and payments were allocated accordingly. I was advised that "incidental" campaign activity would not cause a Book Tour event to be required to be converted to a CAI event. This was contrasted with non-incidental campaign activity; hypothetically, Dr. Carson requesting a Book Tour audience to vote for him for president (which did not occur). These were the general principles that were applied as we evaluated the allocations for each stop and event of the Book Tour.
16. We were also advised that CAI funds could not be used for the personal benefit of Dr. Carson and that would include CAI's payment of Book Tour allocated expenses. I appreciated the potential for a violation if CAI paid for Book Tour expenses or if the Book Tour paid for CAI expenses. As a result, a great deal of attention was paid to the specific allocations. If there were questions that arose during the Book Tour as to the appropriate allocation, I was informed to check with legal counsel before proceeding and this component of the Protocols, as with the others, were followed in each instance.
17. As part of the Book Tour, Carson was extended an invitation by the National Press Club in Washington, D.C. (NPC) to be a guest speaker at a luncheon on October 9, 2015 to comment about his Book and respond to questions from the audience. Neither the Publisher, ABC nor CAI paid for any expenses associated with the appearance and speech at the Press Club. All such expenses were the responsibility of the Press Club.

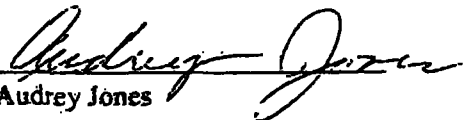
MUR 6989

Declaration of A Jones

May 11, 2016

18. On October 8, 2015, Dr. Carson was in New York City (NYC) for Book Tour related events, including media interviews. He traveled that evening to Washington D.C. (DC) in order for him to make a timely Book promotion appearance on *Good Morning America*, which was schedule for 7:00 AM on October 9, 2015. Dr. Carson stayed at a hotel in DC the night of October 8<sup>th</sup> and made his appearance as schedule at *Good Morning America* on the 9<sup>th</sup> to discuss his Book. The balance of that morning was spent by Dr. Carson conducting various telephone interviews promoting his Book and an appearance and taping on CBN/the Brody File. There were neither any CAI events scheduled that day nor did Dr. Carson attend any CAI events while in DC that day. All travel expenses from NYC to DC and hotel and travel expenses in DC were paid for by the Publisher as part of the Book Tour and coordinated by ABC with the Publisher.
19. Dr. Carson arrived at the National Press Club at approximately 11:45 AM on the 9<sup>th</sup> for his appearance and speech to be given during the Press Club luncheon. This event and appearance by Dr. Carson was scheduled by the Publisher as a Book promotional event. None of the advertisements and signage on the premises were prepared or posted by the Publisher or ABC. The agenda at the National Press Club called for Dr. Carson to deliver his prepared remarks and then to respond to questions from the audience. He then was scheduled to conduct book signings for approximately twenty (20) minutes.
20. Upon completion of his scheduled events at the Press Club, Dr. Carson was transported by car to Dulles airport for a flight to South Carolina for Book Tour events on October 10<sup>th</sup>. During the course of the ride to Dulles, Dr. Carson conducted two (2) radio interviews by telephone regarding the Book.

SO SAY I

  
Audrey Jones

5/11/16  
Date

**BEFORE THE FEDERAL ELECTION COMMISSION**

**MUR 6989**

**EXHIBIT B**

**DECLARATION OF SEALY YATES**

100-444444-100

**BEFORE THE FEDERAL ELECTION COMMISSION**

**MUR 6989**

**DECLARATION OF SEALY M. YATES**

1. I am Sealy M. Yates, an individual of majority age and a resident of the State of California, having personal knowledge of the facts set out herein, declare as follows:
2. I am an attorney at law, admitted to practice law before the California Courts and United States Courts since 1969. I received a Bachelor of Business Administration degree from Baylor University and a Juris Doctor degree from the University of California at Los Angeles. I have been engaged in the practice of law continuously since January 1969, with a general business practice primarily serving as general counsel to closely held businesses and their owners, and non-profit charitable organizations and their leaders, and with substantial experience and expertise in the area of publishing law and the representation of authors.
3. Since 1992, I have qualified in California Superior Courts as an expert witness in several legal cases dealing with publishing matters.
4. I am the senior partner of the law firm of Yates & Yates, LLP which also has served author clients as their literary agents since 1988. Since 1979 I have been negotiating publishing contracts for very successful author clients. Books written and published by my firm's clients have sold millions of copies under our law firm's representation.
5. Since May 2010, I have personally represented Dr. Ben Carson as his literary attorney in the negotiation of the terms and conditions of publishing contracts for the publication of six (6) books written by him. The titles of those books are: *America the Beautiful*, *One Nation*, *One Vote*, *You Have a Brain*, *My Life*, and *A More Perfect Union*.
6. If an author has a book that actually sells successfully in the marketplace, the publisher of that book will almost always try to persuade that author to publish another book with it, under contract terms similar to those of the contract for that last successful book. Other publishers (those who did not publish that last successful book) will most often be very anxious to convince that author to publish his next book with them. As the author's literary attorney, it is my responsibility to manage the demands from publishers for my clients' follow up books after the successful publication of any previous book.
7. In the spring of 2014, Dr. Carson had had two books published back-to-back that sold extremely well. *America the Beautiful* was published by Zondervan Corporation, at the time a subsidiary of Harper Collins, and *One Nation* was published by Penguin Group.

To illustrate how successful both *America the Beautiful* and *One Nation* were, the following is very germane.

8. The hardcover edition of *America the Beautiful* was on the New York Times Bestsellers List for a total of ten (10) weeks between March 4, 2012 and April 21, 2013. The paperback edition of the same book was on the New York Times Bestsellers List for a total of fifty-three (53) weeks from March 4, 2013 until June 22, 2014. The electronic book ("ebook") edition of *America the Beautiful* was on the New York Times Bestsellers List for a total of twelve (12) weeks between March 3, 2013 and August 10, 2014.
9. The hardcover edition of *One Nation* was on the New York Times Bestsellers List for a total of twenty (20) weeks from June 8, 2014 until October 19, 2014, and five (5) of those twenty (20) weeks it was the #1 bestseller on that Times' list. The trade paper edition of *One Nation* was on the New York Times Bestsellers List for a total of ten (10) weeks from September 14, 2015 until November 22, 2015. The electronic book ("ebook") edition of *One Nation* was on the New York Times Bestsellers' List for a total of seven (7) weeks between June 8, 2014 and September 14, 2014.
10. Because of the tremendous success of his two previous books, in May 2014, I was approached by the publisher of the Sentinel imprint at Penguin Group, Adrian Zackheim, with a request that Dr. Carson enter into a new publishing contract for another book to be published by them. He wanted to know if I thought Dr. Carson was ready to write and publish another book and informed me that Penguin was prepared to offer Dr. Carson a contract under the same terms as he had agreed to for the publication of *One Nation*.
11. I negotiated, and Dr. Carson subsequently agreed to enter into an arm's length negotiation with Sentinel of Penguin as to the terms for a new publishing agreement for the publication of a book on the topic of understanding and appreciating the importance of the United States Constitution for every man and woman in America. As a matter of standard business negotiation practices, I told Mr. Zackheim that Dr. Carson and I would not agree that he should agree to the same amount of advance against royalties as had been agreed to in the contract for *One Nation*. Because of the extreme success of the publication of *One Nation*, I insisted that Dr. Carson should be paid a higher advance on a new contract for his next book.
12. After further negotiations, including terms other than royalty advance, as a part of a new publishing agreement, Dr. Carson agreed that he would make himself available for personal involvement with media and a book tour at the time of the of the launch of the publication of the new book. It is a standard business practice in the publishing world that authors will be required by their publisher to agree that as a part of the author's publishing agreement that author will participate personally in activities necessary to

promote the sale of that author's book at the time of the launch of the initial publication of that author's book. That is certainly true when the publishing agreement includes the payment of a substantial advance against future royalties. A requirement that an author make himself available to the publisher for a multi-city book signing tour in multiple states to promote the book is very common in the publication of nonfiction works. A commitment to a publisher for the author to spend 5 to 7 days doing media interviews in multiple cities and then to spend an additional 10 to 14 days on a book signing tour through multiple cities is standard practice in nonfiction book publishing in the United States, especially when the publisher pays that author a significant advance against royalties.

13. On July 16, 2014, Dr. Carson, through his controlled entity, American Business Collaborative, LLC, entered into a publishing agreement with Penguin Group for the publication of his next book, which was subsequently published under the title of *A More Perfect Union*. All of the terms and conditions of that publishing contract were negotiated and agreed upon based upon arm's length negotiation. Dr. Carson could have easily obtained similar terms from other publishers as he agreed to in the Penguin publishing agreement for *A More Perfect Union*.

14. As a result of such arm's length negotiations between the parties, the following language was included in that publishing agreement for *A More Perfect Union*:

" 37. It is a material term of this Agreement that the Author will make himself available for *reasonable* publicity appearances on behalf of the Work at places and times requested by the Publisher in consultation with the Author for a period of three (3) weeks at the time of the Publisher's initial hardcover publication of the Work. The Publisher will provide the Author with reasonable notice prior to such event as to which three (3) weeks it desires the Author to make himself so available. The Proprietor represents and warrants that the Author has not nor will have, prior to the publication of the Work, any existing contractual commitments or obligations to seek third party approval that could prevent him from making such appearances."

15. In my capacity an attorney and literary agent for Dr. Carson, either I or my law partner, Matthew Yates, personally accompanied Dr. Carson on all segments of the Book Tour, except for one day, October 21, when no one from our firm was available to accompany Dr. Carson. One of the protocols that was established by the CAI general counsel prior to the commencement of the Book Tour was that no CAI staff or consultant would participate or provide services to Dr. Carson during the Book Tour. We accompanied Dr. Carson on the Book Tour in order to make certain that that protocol, along with the other such instructions, were diligently observed and complied with for each event of the Book Tour. I can also state that there were no campaign related activities that occurred at any



of the Book Tour events. I received no reports from my partner, Matthew Yates, who accompanied Dr. Carson in those few times when I was not with him, of any campaign activities occurring during any Book Tour event. In some situations when Dr. Carson had personal time on his schedule and he used it to meet with people regarding CAI matters, staff or consultants of CAI would pick-up Dr. Carson and transport him to the meetings and then return him to the original place of origin. None of the costs associated with any such CAI meetings, such as ground transportation and staff salary, were paid for by the Publisher as part of the Book Tour, or otherwise.

SO SAY I.

Under penalty of perjury, the preceding facts are true and correct to the best of my personal knowledge.

Sealy M. Yates  
Sealy M. Yates

May 15, 2016  
Date

**BEFORE THE FEDERAL ELECTION COMMISSION**

**MUR 6989**

**EXHIBIT C**

**TRANSCRIPT OF SPEECH**

**BY DR. CARSON**

**AT**

**NATIONAL PRESS CLUB**

100-444444-100

NATIONAL PRESS CLUB LUNCHEON WITH BEN CARSON

SUBJECT: DR. BEN CARSON, NOTED NEUROSURGEON AND AUTHOR OF THE NEW BOOK WHICH HE WROTE WITH HIS WIFE, CANDY CARSON, IS TITLED: "A MORE PERFECT UNION: WHAT WE THE PEOPLE CAN DO TO RECLAIM OUR CONSTITUTIONAL LIBERTIES."

MODERATOR: MYRON BELKIND, PRESIDENT OF THE NATIONAL PRESS CLUB

LOCATION: NATIONAL PRESS CLUB BALLROOM, WASHINGTON, D.C.

TIME: 1:00 P.M. EDT

DATE: FRIDAY, OCTOBER 9, 2015

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**JOHN HUGHES:** (Sounds gavel.) Good afternoon, and welcome. My name is John Hughes. I'm an editor for Bloomberg News First Word, that's Bloomberg's breaking news desk here in Washington, and I am President of the National Press Club. [applause] Thank you. Thank you. Our guest today is republican Presidential candidate and neurosurgeon Dr. Ben Carson. He'll discuss his newest books, one he wrote with his wife Candy, titled *A More Perfect Union: What We the People can Do to Reclaim our Constitutional Liberties*. But first I would like to introduce our distinguished head table. This head table includes club members and also guests of the speaker.

From the audience's right, Joseph Morton, he's a Washington Correspondent for the *Omaha World Herald*, and he is the Membership Secretary of the National Press Club. Ferdous al-Faruque. He's a reporter for the Gray Sheet. Jennifer Laszlo Mizrahi, President of Respectability USA. Benjy Sarlin, he's political reporter for MSNBC. Candy Carson, she's the wife of our speaker. [applause] Thomas Burr, he's the Washington Correspondent for the *Salt Lake Tribune* and he is the Vice-President of the National Press Club. Myron Belkind. He's a George Washington University professor and former President of the National Press Club. Kevin Merida, he's the managing editor of the *Washington Post*. Gabriel Debenedetti, he is the national political correspondent for Politico. Yasmine El-Sabawi, she's the correspondent for the Kuwait News Agency. And Dakarai Aarons, he's Director of Strategic Communications for the Data Quality Campaign.

[applause]

I also want to welcome our other guests in the room today and our CSPAN and Public Radio audiences. I want to welcome our audiences watching the live stream on our website Press.org. And you can also follow the action on Twitter. Use the hashtag NPCLive. That's hashtag NPCLive.

Well our speaker today has never served in Congress or as the Governor of a state or in any elected office of any kind. He did tell me he was elected—[applause]—and that gets applause. He did tell me that he was elected to the Yale Board, so there's an elected office, but that's as close as it comes to being elected to any kind of public office. And this is one of the reasons Dr. Ben Carson's supporters say they want him to be the next President. He's not part of the Washington establishment that so many fault for gridlock and ineffectiveness.

So far on the campaign trail he's separated himself from better-funded candidates with the political experience that he lacks. Recent polling has Dr. Carson running second nationally for the GOP nomination behind Donald Trump and ahead of Carly Fiorina. In campaigning he has shown his sharp opposition to Obamacare, his support of the Second Amendment, his concern about the federal debt, and his goal to stop abortion. He also says all options must be on the table when confronting Russia's Vladimir Putin.

His life story has become familiar to many. He grew up poor in Detroit with a single mother and excelled in school. He rose to become the Director of Pediatric Neurosurgery at Johns Hopkins for 29 years. He became the first person to successfully separate Siamese twins joined at the back of the head. He won the Presidential Medal of Freedom in 2008. And he has published several books, including his autobiography *Gifted Hands*.

During various media appearances, he has made a lot of headlines on issues such as the mass shooting in Oregon, the debt limit, and whether he could vote for a Muslim for President. But we all know the best place to make news is in this room and at this podium. [laughter] So let's be about it. Ladies and gentlemen, please give a warm National Press Club welcome to Dr. Ben Carson.

[applause]

**DR. BEN CARSON:** Thank you. Well thank you very much. Candy and I are delighted to be here. And I will just get right into it, because I don't have a whole lot of time. And we're going to want to leave a little time to answer some questions. You know, why did I write this book? And America is such a great place, and I am so glad that I was born here. You know, I have traveled to 57 different countries, gotten to know lots of people and a lot of other ways of life. But this remains the place that is the land of dreams.

And I know a lot of people like to criticize our nation, and demonize it, and say it's responsible for a lot of horrible things. And yet I see a lot of people trying to get in here, and not a lot of people trying to get out. So I'm not sure that that really is all that legitimate, to be honest with you.

But, you know, growing up in poverty, with a lot of disadvantages, the thing that was really great is I was still able to focus on my dream of becoming a doctor. It was the only thing I ever wanted to do. I skipped right by policeman and fireman and went straight to doctor. And, you know, I loved anything that had to do with medicine. I even liked going to the doctor's office. And I would gladly sacrifice a shot just to be able to smell those alcohol swabs, you know, it was so cool.

And on through the whole process, were there a lot of hurdles along the way? Absolutely, tremendous hurdles along the way. But, nevertheless, it was still possible to realize that dream. And I want to make sure that that continues to be the case. And one of the reasons that it was possible is because we have a system that did everything possible to create fairness, even when there were people in the system who did not want to be fair. And that's why it is so important that we must preserve our Constitution. Virtually all Americans know that we have a Constitution. But how many people actually know what's in it? And how many people actually know what's behind it?

And, of course, it is the mechanism that guarantees our liberties and that provides the guidelines for the restraint of government. Because our founders recognized that it was the natural tendency of government to grow and to invade every aspect of your life and to try to control your life. That's what people do. And that's what they wanted to avoid by doing this. And that's why it's so important that we understand it.

You know, in 1831, when Alexis DeTudville[?] came to America to study our great country, because the Europeans were just so flabbergasted that this fledgling nation, barely 50 years old, was already competing with them on virtually every level, he was going to really dissect it and see what was going on. But one of the things that really impressed him was how educated the people were. You know, anybody finishing the second grade was completely literate. He could find a mountain man on the outskirts of society and the guy could read the newspaper and could tell him how our government worked.

And nowadays, we don't seem to emphasize, you know, civics and things like that in school anymore. And I'm sure some of you have seen some of those man on the street interview situations, where they go out and ask just really basic questions, and people have no clue what you're talking about. And you know, they think, you know, you say, "Well who's the first President," and they say, "Reagan?" I mean they just—[laughter] They just—they have no idea.

And it's funny, but it's so sad, because our founders, and particularly Franklin and Jefferson, emphasized education, and they emphasized being informed. And they said, "Our system of government and our freedoms are dependent on a well informed and

educated populace," because they recognized that, if the people were not well informed, that they would be easy to manipulate. And all it would take was dishonest politicians and a complicit news media and off you would go into another direction very, very quickly.

Now, I'll tell you right off the bat, before I go any further, I'm not politically correct. I will not be politically correct. And that's one of the reasons that a lot of the people in the press don't like me. But it's okay, because you know, what I really love is this country. I don't necessarily care whether the press likes me or not. And therefore, I'm not going to conform to all their little requirements. Like people ask me all the time, "Well why don't you just do this and do this? And then they won't say bad things about you." Because this is America, that's why I'm not going to do that. And I never will do that.

But I want to touch on some of the aspects of America that I touched on in the book, like the balance of powers, the check and balance system, the separation of powers. I believe this is so vitally important. And it was a touch of genius by our founders because they recognized that each branch, Executive, Judicial and Legislative would want to maintain their power. And therefore, they would push back against excesses in the other branches.

And that works extraordinarily well in a government like we have when they all are exercising their power appropriately. Unfortunately, we have a legislative branch that really acts more like a peanut gallery. You know, they sort of sit there and watch what the others do, sometimes complain about it, but really don't offer any resistance, because they're afraid somebody might blame them. News flash, they're going to get blamed anyway. So what they really ought to be thinking about is how do they get involved and be more proactive?

You know, case in point, I think about the recent decision by the Supreme Court on gay marriage. Now first of all, let me just say, I have nothing against gay people whatsoever. I know a lot of people don't believe that because we live in a society now where, if you don't accept their entire agenda, then you're a homophobe. But, you know, I personally believe that any two people, regardless of sexual orientation or anything else, have the right to associate together. If they want to have a legal contract drawn up which allows them to share property, have hospital visitation rights, do whatever they want, absolutely. I don't have any problem with that. That's the kind of country that this was designed to be, live and let live. Not impose your values on everybody else. And that's the problem.

But with the Supreme Court ruling that changes essentially the definition of marriage, it doesn't take into consideration the implications of that. If you change it for one group, why won't you change it for the next? What defense do you have against the next group? You're going to say, "We can only change it this one time. We're never going to change it again"? Well that wouldn't be very fair. So why change it in the first

place? It's been working very well for thousands of years. And that's what happens when people go in and start tinkering with things without thinking about the implications of it.

And the legislative branch, however, I would have thought would have been already prepared with legislation in case the Supreme Court came down with that decision, to make sure we preserve the rights, the religious rights of everybody. Not everybody agrees with their new definition of marriage. And it's a conviction and a religious conviction. And they need to make sure that they protect people's religious rights. They bring Johnny-Come-Lately, but I call upon Congress to do that now, because there are people who are losing their jobs, their livelihood. And it's not fair. That's not what America was supposed to be.

But, unless all the branches of government are functioning the right way, these are the kinds of things that happen, because there will be overreach by any of the branches, because they're composed of people and people are not perfect. But that's why we have the counterbalance in order to be able to rectify the situation, because one group may not take into consideration the ramifications of what they are doing.

Also, the Constitution indicates that, you know, civil issues really should be dealt with at the local level, at the state level. There was a reason for that. It was because the legislators and the judiciary at the local level are subject to the will of the people. The people vote them in, the people vote them out. And our founders felt that the people should be the ones who determine how things worked and the standards by which they lived.

When you take those issues and you bump them up to a level where the people making the decisions have no obligation whatsoever to the people, then you wind up with an oligarchy type government. That was not what the founders intended for America. So we are somehow going to have to look into ways to rebalance that, because if we continue down that pathway, you can see how virtually everything that they intended will be upset. We don't want that to happen.

The Preamble to the Constitution talks about the role of the government in terms of promoting the general welfare. That doesn't mean that we want to put everybody on welfare. That's not what the general welfare is. It means that, when we do things, we want to do them in a way that they benefit the entire society. And it is very important, you know, that we take care, that we make sure that everybody is taken care of in an appropriate way. But, when I say "we," that does not necessarily mean the federal government.

You know, I get criticized sometimes, inappropriately by the way, by people who say, "Carson grew up very poor. He must have benefited from some government programs. And now he wants to withdraw all the safety nets." Well this is nothing but a blatant lie by people who need to characterize me as heartless. They love to do that. They love to say, "Carson is insensitive, and he's heartless, and he hates people," because they need that narrative. That's the only way that it can be acceptable, because I'm—I don't fit

into their general description. You know, a black people who is a conservative? They can't quite deal with that. Who talks about self-reliance, and that you're not dependent on them? Oh how could you possibly say such heresy?

So, you know, it's necessary to demonize individuals like that. And I understand that. And I'm actually willing to fight with them. I will continue to fight with them. But I'm fighting for something even greater. And that is, I'm fighting for the people of the United States, because you see, we have very, very smart and very, very capable people in our nation who would be extremely good leaders, but they say, "Why would I get into that cesspool and be attacked and have my family attacked and have people going through every aspect of my life and trying to demonize me?" And people don't want to do that.

Well, I am going to fight that fight for them. And if I am successful, I expect that maybe a lot more of the people in our country who are not professional politicians will say, "You know what? He did it. I'm going to do it too." And I think we'll be much better off as a country when we once again understand that this country is for everybody and not for a specific political class.

[applause]

But as far as the whole safety net argument is concerned, my mother worked extraordinarily hard, three jobs at a time, leaving the house before five in the morning, getting back after midnight, because she didn't want to be dependent. And she occasionally accepted some aid. But, for the most part, was able to stay off of it. And she refused to be a victim. And she refused to let us be victims.

And it wasn't that she didn't recognize that there were problems out there. But she chose to focus on other things. And she would say to us, "If you walk into an auditorium full of bigoted, racist people," she said, "You don't have a problem, they have a problem." She said, "Because when you walk in there, they're all going to cringe and wonder if you're going to sit next to them. Whereas you can sit anywhere you want." [laughter] And you know, that's kind of the way that I have chosen to lead my life.

Have there been obstacles? Of course. Have there been racist people around? Of course there have. But I said, that's their problem. I've got some very important things that I need to do. So I can get wrapped up in their problem, or I can do the important things. Not everybody chooses to lead their life that way, and that's fine. But that's the way that I chose to lead mine. And it works pretty well, if I do say so myself.

Having said that, I am very concerned about the downtrodden people in our society. And I do believe we have a responsibility to take care of them. But when I say "we," I'm talking about we the people. I'm talking about the private sector. I'm not talking about the government. You know, the government has been taking this on really since Woodrow Wilson, but it kept increasing. By the time we got to Lyndon Johnson and the



war on poverty, it was, hey, we're the savior, we're going to take care of you guys. We're going to solve all these problems.

Well here we are, all these years later, \$19 trillion dollars later, did we solve the problem? We have ten times more people on food stamps, more people in poverty, welfare, broken homes, out of wedlock births, crime, incarceration, everything that was supposed to be better is not only worse, it's much worse.

So I'm not going to sit here and demonize the government for doing that, but I'm saying, isn't it time to wake up and start thinking about another way to do things, rather than driving ourselves into debt without solving the problem? And that is a tremendous responsibility of the government as well, to remain solvent, because you are the guardian of the people's future. I mean how can we enjoy the liberties and have our posterity, enjoy the liberties if they are overloaded with debt? \$18 ½ trillion dollars, the national debt? Think about that. To pay that back at \$10 million dollars a day, it would take you over 5,000 years. That's absurd. And we're putting that on the backs of our young people.

And now, here we are, sitting here saying, oh, let's increase the debt some more. Let's raise the debt ceiling some more. Did it ever maybe occur to us that there's another way? I mean there are 4.1 million federal employees. I would offer that that's too many. And there are 645 federal agencies and sub-agencies, all of whom have budgets. This is absurd. And we've had people saying, "If you cut the budget by one penny, it will be a disaster." Nancy Pelosi. You know, I mean, this is absolutely absurd, okay.

But we must think about the children. And that really is the main reason that I've gotten into the fray here, as a pediatric neurosurgeon, my whole professional career centered on the children and on the future for the children. And what we had to do to improve quality of life for them. How can we in good conscience continue this charade of responsibility knowing what we are doing to their future?

If I had time, I would really get into the fiscal gap and all the implications of that, and what the implications of the debt is on the Fed, and how they're irresponsibly printing money, and how the low interest rates are hurting the poor and the middle class because, you know, putting money into a savings account or buying bonds doesn't help them. The only people who can really make money are people who can have a risk tolerance which allows them to go into the stock market.

And I would talk about the regulations and how every single regulation costs money in terms of goods and services, and how those are the things that are really impacting the middle class and the poor people. It doesn't matter for wealthy people if a bar of soap goes up ten cents, but it matters a lot for the middle class and for poor people. You think about that regulatory burden and who it is really hurting.

You know, it goes on and on and on. When we're promoting the general welfare, those are the kinds of things we have to be thinking about. We have to be thinking about

mechanisms for allowing the downtrodden in our society to escape from dependency and move up into the fabric of success in our country. And we have to understand that we only have 330 million people. Sounds like a lot, but China has over a billion, India has over a billion. We need to get the bang for the buck out of all of our people. We need to be thinking about policies that allow all of our people to rise and stop all this silly class warfare stuff.

And we can get immediate, immediate stimulus by thinking about the over \$2 trillion dollars that exist overseas right now. We need to bring that money back. I can remember many an afternoon sitting around the Board table at Kellogg or Costco, talking about the money overseas, and what we were going to do with it, and how we would love to bring it back in order to build another factory or do something else. But the corporate tax rates were too high.

Well, what if we had a six month hiatus on those corporate taxes overseas, let that money be repatriated. I've been talking about this for several months. And we wouldn't—it wouldn't cost them anything to repatriate it. We would only request or require that 10 percent of it be used in enterprise zones that are set up in our major cities or to provide employment for people who are unemployed or on welfare. You want to talk about an incredible stimulus that didn't cost the taxpayers one penny, that would be the biggest stimulus probably since FDR's New Deal. That's low hanging fruit. It's low hanging fruit.

[applause]

And you know, that's what we've got to do, deal with this low hanging fruit. The other thing is, it gets business and industry once again thinking about how do we invest in the people around us? This is what we used to do, before the government started taking over everything, because Americans are very generous people. You think about the early America, and you had these communities all over the place, in many cases separated by hundreds of miles. How did they survive, and how did they thrive? Because at harvest time, if a farmer was up in an apple tree picking apples and fell out and broke his leg, everybody else pitched in and harvested his crops. If somebody got killed, everybody else pitched in and took care of their family. That's who we are. When there's disaster in the world, who is always on the front line? It's us. So let's utilize that and recognize that we are our brother's keeper, and it is our duty to take care of the indigent, it is not the duty of the government. And if we learn that—[applause]

And then, another important aspect of our government is to provide for the common defense. Now I could talk about this for a long time. But simply to allow our military to deteriorate the way it has, to fail to take care of our veterans to the point where we have 22 to 23 suicides every day, it makes absolutely no sense. To leave our electric grid unprotected, it needs to be hardened. We need to have several layers of alternative energy. You know, this is criminal what we're doing, because we are so vulnerable. And, you know, we need to really beef up our cyber capabilities.

And I'll tell you, under a Carson administration, if another country attacks us with a cyber attack, they're going to get hit so hard, it's going to take them a long time to recover. We can't sit around and let people do stuff and just say, "You're bad. I don't like you," you know. [laughter] We can't do that. [applause] And, you know, we have to understand—[applause] We also need to reinvigorate our space program. I think it is a crime that we have moved away from that. Think about all the inventions, the innovation that came out of that. Your cell phone, so many things. And the important thing is, in the future, he who controls space controls the earth. We cannot be tardy to that when there are others who are working very hard in order to conquer that area. [applause]

And then, the last area I just wanted to mention briefly, and I could really go on for quite a while on this one, but there is only one business in America that is protected by the Constitution. And that is the press. And there was a reason for that. It was because the press was supposed to be an ally of the people. And they were supposed to expose and inform the people in a nonpartisan way. When they become partisan, which they are, they distort the system as it was supposed to work. And they allow the side that they pick to get away with all kinds of things.

And I think there's still hope for the press. I think it is possible that some of them will recognize that it's almost a sacred obligation that they have to the people to be honest. [applause] Now you know, just in the last week, in my own case, they take something that I say about the shootings in Oregon, and don't put the part in where I was answering the question, don't put the question in, just give the response, and say, "See, he's being critical of the people." I mean the good thing is that a lot of the people in America are onto them and understand what they're trying to do. And that's one of the reasons we're doing well. And it seems like the more they attack me, the better we do, because people expect that, you know. [applause]

And last week, I'm leaving a press conference, getting ready to get on a bus, and the reporter says, "Can you tell me what you're going to do about hurricanes?" I said, "Goodbye. I don't know." The next day, "Carson wants to be President, has no idea what to do about hurricanes," you know. This is the level of insincerity that we see. And it really is kind of embarrassing to see that. And it happens on the other side, too. It's not just on one side, you know.

I was doing an interview with Wolf Blitzer yesterday, and he was asking about renewal of the Voting Rights Act. And of course I want renewal of the Voting Rights Act, or at least an aspect of it that protects all Americans' rights to vote. But it's a much longer conversation about what needs to be done to it before it is renewed. It was something based on conditions 50 or 60 years ago. A lot of things have changed since that time. We certainly don't want to empower the Department of Justice to do some of the things that the Holder Justice Department did based on that bill.

So everything needs to be looked at in its context. And when news media pick one word or one phrase and they run with it and they try to characterize people like that, I got

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And now it's our turn. And what are we willing to do for our children and for our grandchildren? Are we willing to stand up? Or are we afraid that somebody is going to call us a nasty name, or that we're going to get an IRS audit, or that somebody is going to mess with our job? You know, we have a lot less to lose than they did. And the people who were always telling me, "Hang in there, don't let them get to you," believe me, do not worry about it, because the stakes are much too high. Thank you very much.

10.

And I believe that Putin is very desperate right now because oil prices are very low. That's what's really been precluding his expansionist activities, and not us, believe me, it's the economic situation. Now, he can get a foothold in Syria and then begin to spread his influence throughout that region. And if he can gain control of significant energy reserves, he might then be able to have a much more control on energy prices throughout the world. And that will then embolden him, because he will be strengthened to do what he needs to do.

But we need to fight him everywhere. You know, we need to be reestablishing the missile defense system, I think, in Eastern Europe. We need to be supplying arms to the Ukraine. We said we were going to protect them if they gave up their nuclear weapons. They gave them up. Did we protect them? Of course not. You know, we've turned our back on Israel.

You know, I don't think the rest of the world is idly sitting by and noticing that we renege on our responsibilities. So we need to oppose him at every step. We also need to take advantage of his economic weakness by using our economic strength in very wise ways.

**MR. HUGHES:** The House is looking for a new Speaker. And there's a report that Mitt Romney called Paul Ryan and urged him to run for Speaker. Is Paul Ryan the guy? Should he run for Speaker? And as President, how would you work with Congress to end the gridlock that's defined Washington so often?

**DR. CARSON:** Paul Ryan is a fine person. I like him. I like a lot of people in Congress. I hope the process plays out. I hope that a number of people will present their philosophy for leadership and that there is an opportunity for the members of Congress to see who they want to work with as their leader. And what I would do is I would have a policy of talking. You know, the current administration doesn't talk a lot to the people in Congress, not even to their own party. How can you come to resolutions without talking?

I mean what happens before people get divorced? They stop talking. The next thing you know, their spouse is the devil incarnate, you know. That's what we're seeing. And you know, we all basically want the United States to succeed. We have different philosophies about how that's going to be done. But I think if we're willing to sit down and talk about, then we find that we're not nearly as far apart as we think we are. We do have to keep the instigators out and the people who try to irrigate and agitate.

You know, a good example of that is a few weeks ago when I was on Meet the Press, and I said, I think anybody from any religion or any background who is willing to embrace our values and is willing to put our Constitution above their belief system is acceptable to me. I don't know why that is a difficult subject for people to understand. But anyone whose belief system does not conform to our Constitution and who is not willing to put that under our Constitution, why would that person be the leader of this country? That doesn't make any sense.

[applause]

**MR. HUGHES:** In your first three months in office, what would be different? And how will the people know it?

**DR. CARSON:** Well first of all, I would call for a joint session of Congress. And I would want them to know that under a Carson administration, we recognize that the people are at the pinnacle, and that we work for them, and they don't work for us. And we have to begin to also understand that we are Americans first and democrats and republicans second, or maybe even third. We have to stop fighting each other, because one of the things that I think threatens to destroy our nation is the extreme divisiveness. And we've gotten to the point where we believe that if somebody disagrees with you, then you need to try to destroy them, destroy their family and their livelihood. Where did that come from? I guarantee you, it did not come from our Judeo-Christian values and roots.

[applause]

**MR. HUGHES:** As President, who would you want as Chairman of the Federal Reserve? And/or what kind of qualities do you want in that person?

**DR. CARSON:** Honesty and commonsense would be good starters. And that's not to say that we haven't had such people. You know, I like Janet Yellin. You know, I've served on a board with her. She's a very decent person. I think she's trying very hard. But you've got to realize that we've put the Fed in a very difficult position right now, because of the amount of debt that we've accumulated. It's very hard for the Fed to allow interest rates to rise to a reasonable level with an \$18-plus trillion dollar national debt. The debt service with an interest rate suppressed almost to zero is still \$250 billion dollars a year. Can you imagine what it would be if we allowed the interest rates to rise to their normal levels?

So we need to be working on driving that debt down. And I have some ideals about how that can be done. And that can have a very ameliorating effect and some freedom for the Fed. But the other thing is, I would like to see somebody who understands that we can't just print money based on the good name and faith and credit of the United States of America. You know, we decoupled, you know, in 1971—1933 and 1971 from the gold standard. It doesn't have to be gold. There are other things that it can be coupled to. But we need to have some responsible underlying to what we do. And I think it would make a big difference.

**MR. HUGHES:** You mentioned your comments on Meet the Press, and I've gotten several questions from the audience related to that. One questioner says, there are Muslims serving in our United States military and our police forces, in our courts, our school boards, our city councils, so on and so forth. So how is it okay for a Muslim to serve and die in the military to defend our values or for a judge to uphold the

Constitution, even though the faith of those individuals are incompatible with the Constitution they are sworn to protect and uphold? Long question, but you get where they're going.

**DR. CARSON:** Well again, a good understanding of the Constitution answers that question for you, because when you look at the Article 2, and we're talking about requirements for the President, and they have to be a natural born citizen, now why is that the case? I'm sure if you had gone to the founders and said, "But what about this person? They may not be a natural born citizen, but you know, they've been in America for most of their lives. And they're fine, upstanding citizen. They've served in the military. They came back. They were on the police force. Can't they be the President?" And they would have said, "No." They said, "We don't even want to take the slight chance that we would put someone in that position who had different loyalties." That's the answer to your question.

[applause]

**MR. HUGHES:** Questioner about your opposition to Obamacare. And the question along the lines of, you're a doctor. And obviously, all the parts of medical care are important to you, preventative care, many of the things that Obamacare provides. So the questioner is wondering how your values as a doctor, and the importance of people getting healthcare squares with your opposition to this program that has given so many access to healthcare.

**DR. CARSON:** Chomping at the bit for that one. First of all, the reason that I don't like the so-called Affordable Care Act is not because it doesn't work, and not because it's not affordable, but the real reason is because it flies in the face of the very principles of the establishment of this country. This country was supposed to be of, for and by the people, with the government there to facilitate life, liberty and the pursuit of happiness. With that Act, the government comes along and says, "I don't care what you people think. This is what we're doing. We're cramming it down your throat. And if you don't like it, too bad." Well that is antithetical to the whole concept of the people being at the pinnacle and the government there to serve it. It basically flips the relationship and puts the government in the driver's seat with us at its beck and call. And if they can do that with the most important thing you have, your health and your healthcare, it's not long before they can do it with every aspect of your life. And it begins the fundamental changing of America. And that's why I want to stop it in its tracks, turn it around. I think most people did not recognize what was happening. We have to, once again, restore the people to the pinnacle.

Now, having said that, I do want everybody to have good care. It is consistent with who I am. And you know, I've talked about a healthcare system. But let me just talk about the part for the indigent. How do we take care of the indigent now? We have Medicaid, \$4-\$500 billion dollars a year. How many people participate? About a quarter of the population, which is way too many, by the way. And we can address that by, how do we get the economy rolling again?

But if 80 million into \$400 billion goes 5,000 times, \$5,000 dollars every man, woman and child on Medicaid, that's how much is allocated. What could you buy with that? Most concierge practices cost between \$2 and \$3,000 dollars a year. So you can put them all in a concierge practice and still have a couple thousand dollars left over for their catastrophic insurance, which is much cheaper, because there's something else that we've done with that, that I don't have time to explain.

But I'm not saying that we do that, but I'm saying we have enough money to do that. And what's the result of that? Now, when Mr. Jones has that diabetic foot ulcer, he's not going to go to the emergency room where it costs five times more, he's going to go to the clinic, where he gets the same treatment. But, instead of just patching him up and sending him out, they're going to say, "Mr. Jones, let's get your diabetes under control so you're not back here in three weeks with another problem." A whole 'nother level of savings, which is not being recognized right now. And we're teaching him personal responsibility rather than dependency. Those are the kinds of things that we should be doing. That will cost us a lot less money. And everybody will be of equal value. You won't have people that people say, "I don't want to see them. You know, they're going to have to go to the emergency room." And it's going to cost us actually less money. That's the kind of thing we should be doing. And that's the kind of thing we can be doing when we take something so important as medicine out of the political arena and start taking care of our people.

[applause]

**MR. HUGHES:** I've received several questions from the audience about guns and your comments about the Holocaust and if Jews had been able to protect themselves, much of it could have been prevented. I'll let you clarify that. And also, the whole approach to these mass shootings, is having more people armed the kind of thing that can stop more of these mass shootings, do you think?

**DR. CARSON:** Okay, well you know, the Holocaust issue, that's just the left wing press again trying to stir up a controversy, and which I expect of them. That's what they do. But basically, what I said is that when tyranny occurs traditionally around the world, they try to disarm the people first. And that's exactly what happened in Germany in the mid to late '30s, they started a program of disarming the people. And by the mid '40s, look at what had happened. And it's happened in a number of other countries as well.

Daniel Webster said tyranny would never occur in America because the people are armed. So there's a reason that we have the Second Amendment. And it doesn't mean that I'm not happy to look at ways to keep these tragedies from occurring, as long as they don't interfere with the Second Amendment. That's what we have to keep in mind. And then, what was the other part of that question?

**MR. HUGHES:** Will it help to prevent more of these?



**DR. CARSON:** Well, with the mass shootings, one of the things that many people have noticed is that they tend to go to places that are gun-free zones. So even though they may be mentally disturbed, they're not so mentally disturbed as not to be able to realize that, if you go someplace where people can shoot you, you're probably going to get shot. So what I'm saying is that it's probably a good idea to make sure that there are people in the areas where we have vulnerable people who can oppose these people, not with just words, but who are trained. You know, they can be retired policemen, retired military, some teachers might have the ability to do that. But I would feel much safer if my kid or grandchild was in a school where I knew that there were people who could protect them if somebody like that came in.

To me, what I'm talking about is commonsense. To some of the people out there, there is no such thing as commonsense.

[applause]

**MR. HUGHES:** We are almost out of time. Before I ask the final questions, I have some housekeeping. The National Press Club is the world's leading professional organization for journalists. And we fight for a free press worldwide. To learn more about the Club visit our website, that's [press.org](http://press.org). And to donate to our nonprofit Journalism Institute visit [press.org/institute](http://press.org/institute).

I also want to remind you about some upcoming events. On Thursday, October 15<sup>th</sup>, the Club will hold its annual Fourth Estate Award Gala. This year we will honor Gwen Ifill, moderator and managing editor of Washington Week and co-anchor and managing editor of the PBS News Hour. On Wednesday, October 21<sup>st</sup>, we will reprise a Press Club event from 100 years ago, when Senator Tim Kaine and other members of Congress face off against members of the news media in the Politicians versus the Press Spelling Bee. And on Friday, October 23<sup>rd</sup>, Oscar Winning director and actor Kevin Costner will be here to discuss his new book.

I would now like to present our speaker with the honorary National Press Club mug. [applause] You have been here before, so you're developing a collection.

**DR. CARSON:** Thank you.

**MR. HUGHES:** So a couple of final questions. If the situation was right down the campaign trail, circumstances change, would you consider being Donald Trump's running mate?

**DR. CARSON:** The press will have a field day with this one. [laughter] And, by the way, before I answer that question, I just want to mention, many in the press will say that I'm sensitive and that I should not be thinking about running for office because I get offended by what they do. Of course they'll say that. But the reason that I expose the press is because I want the people of America to understand what they're doing. So it's

not because I'm sensitive, I will continue to expose them every time they do something. Because as more people understand who they are and what they're doing, it will negate their effect. And that's, until they have the kind of transformation that is necessary for them to become allies of the people, we have to know what they're doing.

Now, in terms of—Trump? How could I forget. [laughter] You know, I believe that Donald Trump has been very useful, because he's brought in a lot of people, brought in a lot of curiosity and enthusiasm. And whoever the eventual nominee is will benefit from that, even if it's him. That's a good thing. So you know, that's one of the reasons I don't talk about him, I don't talk about anybody else.

But in terms of a Vice-President, I would obviously want somebody who is compatible with me. I would not necessarily be looking for somebody who can bring in this demographic or that demographic, because the things that have to be done are very, very serious things, quite frankly. This can't be tampering around the edges. We've got to go to the heart of the matter. And I don't think we have a whole lot of time to do that. So it would have to be somebody who is very compatible, who understands the urgency of what we are doing, who is willing to suffer the slings and arrows to get it done. That's what it will take.

[applause]

**MR. HUGHES:** Ladies and gentlemen, please give a round of applause to our speaker.

[applause]

I would also like to thank staff members of the National Press Club and Journalism Institute for their work in preparing for today's event. For a copy of today's program, or to learn more about the National Press Club, go to that website, [press.org](http://press.org). Thank you. We are adjourned. (gavel)

END

**BEFORE THE FEDERAL ELECTION COMMISSION**

**MUR 6989**

**EXHIBIT D**

**EXAMPLES OF RECENT FEDERAL CANDIDATES  
WHO AUTHORED BOOKS**

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## MEMORANDUM

Below, are five examples of candidate promotional activities: 1) Donald Trump; 2) Gov. Jeb Bush; 3) Congressman Paul Ryan; 4) Sen. Scott Brown; 5) Speaker Newt Gingrich; 6) Senator John McCain; and 7) Secretary of State Hilary Clinton.

### Donald Trump

Trump released his book, "*Crippled America*", on November 3, 2015. That same day, Trump held a book signing and press conference at Trump Tower in New York City. The event was announced to the public the previous week.

The event began with the press conference where Trump discussed his Presidential campaign. During the press conference, Trump stood at a podium centered in front of an oversized banner containing a photo of the book cover.

Following the press conference, but in the same building, Trump sold and signed copies of his books for those in attendance. While signing copies of his book, several news outlets report Trump openly discussed his candidacy and his opponents with attendees and members of the media.<sup>1</sup>

### Gov. Jeb Bush

- On October 30, 2015, Gov. Jeb Bush released his self-published e-book, "*Reply All*".
- Following the book's release, Bush embarked on a three-day book tour in Florida, South Carolina and New Hampshire.

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<sup>1</sup> See Michael Barboza, *Donald Trump Pitches New Book (and a Campaign, Too)*, N.Y. Times (Nov. 3, 2015) ("Mr. Trump effortlessly switched back and forth between book signing and politicking...he alternated between boasts about how hard he labored on the book and broadsides against his Republican rivals.").

Congressman Paul Ryan

A. Background.

While serving in Congress and also a candidate for re-election, Ryan embarked on a tour to promote his book, "*The Way Forward*".<sup>2</sup> The House Ethics Committee reviewed and approved his publisher agreement. This agreement stipulated that Ryan would be paid royalties in accordance with an industry-standard percentage of the net sales revenue. Ryan did not receive any advance payments.

B. Promotional Tour.

The publisher planned and paid for Ryan to go on a promotional book tour. Specifically, the publisher paid for all costs associated with obtaining and operating the tour bus. In accordance with the House Ethics Rules, the publisher agreement specified that all activities would be conducted on the same or equal terms available to other authors who are not members of Congress.

Ryan and the publisher agreed that the tour bus would neither travel through nor stop in Wisconsin where Ryan was at the time a candidate for re-election. The tour included twenty-one (21) appearances<sup>3</sup>, over the course of eight (8) days, in the following states: 1) Pennsylvania; 2) Wisconsin (despite prior indications that he would not appear there); 3) Illinois; 4) Florida; 5) Oklahoma; 6) Texas; 7) Colorado; and 8) California.

Apart from appearing at book stores, other tour stops included the following locations: 1) The Reagan Presidential Library; 2) The George W Bush Presidential Library; 3) Hastings; 4) The Union League Club of Chicago; 5) The John MacIver Institute of Public Policy; 6) The Union League of Philadelphia; and 7) The World Affairs Council.

<sup>2</sup> See Request for Advisory Opinion, June 30, 2014. Available at: <http://saos.fec.gov/aodocs/1300163.pdf>.

<sup>3</sup> Sources differ as to the exact dates and locations of events.

Several tour signings were scheduled as "talk and signings" that presented a conversation between Ryan and another noteworthy political figure. These individuals were: 1) Bill Bennett; 2) Dana Perino; 3) Mitt Romney; and 4) Michael Smerconish.

There was also website dedicated solely the book tour, paulryantour.com. On this site, there was a link entitled "Main Site". If a user clicks this link, they are taken to Ryan's official Congressional website, paulryan.house.gov. An autographed bookstore company named "Premiere Collectibles" powers the site.

Sen. Scott Brown (AO 2011-02)

A. Background.

Senator Brown's autobiography, "*Against All Odds*", was published on February 20, 2011. Immediately upon release, Brown embarked on a promotional book tour. The Senate Ethics Committee approved the publisher agreement and book tour. The publisher paid for actual and necessary travel expenses in connection with all marketing and promotional appearances. The promotional events were limited to publisher-sponsored book signing tours, private book signing parties, and other similar commercial settings.

B. Advisory Opinion 2011-02

Brown's campaign committee ("Committee") sought guidance from the FEC as to whether it could to engage in the following activity in relation to the book tour:

1. Purchase books at fair market price and use/distribute them in connection with campaign related activities so long as the publisher donates any royalties that Brown would otherwise receive from the sale to charity.
2. Use the Committee's site and social media accounts to promote the book. Specifically, the Committee proposed to attribute the following amount of it's

sites to promote the book: 1) 25% of the Committee's website; 2) 25% of the Committee's Facebook page; 3) 10% of the Committee's Twitter page; and 4) 25% of Brown's LinkedIn page;

3. Use the Committee's email and mailing lists to promote the book;
4. Host campaign fundraising events in cities where the candidate is already scheduled to appear for book promotional events. These events would be ancillary to the book events and would add no additional costs to those paid by the publisher.
5. Collect contact information from book event attendees for future campaign solicitations.

The FEC addressed each request and responded as follows:

1. Yes, the Committee is permitted to use campaign funds to purchase copies of the book from the publisher at the fair market price and the publisher may donate to charity the amount Brown would otherwise receive in royalties from the sale.
2. No, the Committee cannot post promotional material on its sites at the levels it proposed. However, the Committee may post a *de minimis* amount of promotional material on its website and social media sites at a *de minimis* cost. For example, in AO 2006-07 the Commission determined that adding one to two sentences of promotional material on a campaign committee's website would not constitute a prohibited personal use of campaign funds.
3. Since Brown stood to receive royalties from book sales, the use of the Committee's email and mailing lists are subject to personal use regulations. As such, so long as Brown personally reimbursed the Committee for the fair market

value of the rental if its lists (according to an independent appraisal), he could use the lists to promote the book.

Speaker Newt Gingrich

A. Background.

Prior to announcing his candidacy, Gingrich owned a company that sold many books, films and other items written and created by Gingrich and his wife. During his Presidential campaign, Gingrich consistently and simultaneously promoted and sold his his books while also campaigning. Below are several examples

B. Examples of Promotion.

1. In Florida, his campaign held an event in a hotel ballroom. First, Gingrich delivered his stump speech to attendees. After the speech concluded, Gingrich moved to a table in the corner of the ballroom and began selling and autographing his books.<sup>4</sup> At this event, both campaign staff and Gingrich's business staff "mingled to manage the crowd and the candidate".
2. In South Carolina, Gingrich held a campaign event in a historic theater. First, he delivered his stump speech in the actual theater. Once the speech concluded, he moved to the lobby and began selling and autographing his books.<sup>5</sup>
3. On a two and a half day swing through Georgia, Gingrich held several campaign and promotional events. The trip started with a screening of his documentary and ended with a book and DVD signing. On a single day during this trip, Gingrich

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<sup>4</sup> See Amy Gardner, *Gingrich's book-selling efforts test campaign laws*, THE WASH. POST (Dec. 8, 2011). Available at [https://www.washingtonpost.com/politics/gingrichs-book-selling-efforts-test-law/2011/12/06/gIQAtpqYfO\\_story.html](https://www.washingtonpost.com/politics/gingrichs-book-selling-efforts-test-law/2011/12/06/gIQAtpqYfO_story.html).

<sup>5</sup> Id.



held a book signing event at a church in-between a speech at the Rotary club and a Town Hall event.<sup>6</sup>

4. Gingrich's campaign's website promoted book signing events:

C. Separation of Business and Campaign.

Prior to the campaign, Gingrich turned control of his company over his wife. However, at the book signings the two would sit together and each sell/autograph their individual books.

The campaign and company established a set of protocols governing how they interact with one another. First, the expenses associated with paired events were strictly segregated. Secondly, the Campaign paid for all travel to cities where dual-purpose events like the ones mentioned above were held. Lastly, the business paid for all costs associated with the books (e.g. transportation, storage).

Sen. John McCain.

Book Tour.

In 1999, McCain embarked on a national tour to promote his book "*Faith of My Fathers*". The publisher planned the book's release and subsequent tour prior to McCain's declaration of candidacy for President. The publisher completely financed the tour.

The tour began with a kick-off event in New York hosted by Henry Kissinger, Georgette Mosbacher and Michael Bloomberg. The tour took place from September 9 to September

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<sup>6</sup> See Kendra Marr, *Newt mixes media tour, campaign*, POLITICO (Jul. 28, 11), available at <http://www.politico.com/story/2011/07/newt-mixes-media-tour-campaign-060136?o=0>.

24, 1999 and included events in thirteen cities. Apart from bookstores, the tour also included events at the Nixon Presidential Library, a church and a Naval exchange.

#### Hillary Clinton

In 2014, Clinton released her book "Hard Choices" which focused on her experiences as Secretary of State. Clinton's book tour began on June 10, 2014. At the time, she was sixteen (16) months removed from the State Department and had not yet officially declared as a Presidential candidate.